

SECOND DIVISION

[G.R. Nos. 115338-39, September 16, 1997]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LANIE
ORTIZ-MIYAKE ACCUSED-APPELLANT.
D E C I S I O N**

REGALADO, J.:

Accused-appellant Lanie Ortiz-Miyake was charged with illegal recruitment in large scale in the Regional Trial Court of Makati on a complaint initiated by Elenita Marasigan, Imelda Generillo and Rosamar del Rosario. In addition, she was indicted for estafa by means of false pretenses in the same court, the offended party being Elenita Marasigan alone.

The information in the charge of illegal recruitment in large scale in Criminal Case No. 92-6153 reads as follows:

That in or about the period comprised from June 1992 to August 1992, in the Municipality of Parañaque, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, falsely representing herself to have the capacity and power to contract, enlist and recruit workers for employment abroad did then and there willfully, unlawfully, and feloniously collect for a fee, recruit and promise employment/job placement abroad to the following persons, to wit: 1) Rosamar del Rosario; 2) Elenita Marasigan; 3) Imelda Generillo, without first securing the required license or authority from the Department of Labor and Employment, thus amounting to illegal recruitment in large scale, in violation of the aforecited law. ^[1]

The information in the charge for estafa in Criminal Case No. 92-6154 alleges:

That in or about or sometime in the month of August, 1992, in the Municipality of Parañaque, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of false pretenses executed prior to or simultaneously with the commission of the fraud, falsely pretending to have the capacity and power to send complainant Elenita Marasigan to work abroad, succeeded in inducing the latter to give and deliver to her the total sum of P23,000.00, the accused knowing fully well that the said manifestations and representation are false and fraudulent and calculated only to deceive the said complainant to part with her money, and, once in possession thereof, the said accused did then and there willfully, unlawfully and feloniously appropriate, apply and convert the same to her own personal use and benefit, to the damage and prejudice of the said Elenita Marasigan, in the aforementioned amount of P23,000.00. ^[2]

Upon arraignment, appellant pleaded not guilty to the charges and the cases were tried jointly in Branch 145 of the Regional Trial Court of Makati.

Of the three complainants in the case for illegal recruitment in large scale, Marasigan was the only one who testified at the trial. The two other complainants, Generillo and Del Rosario, were unable to testify as they were then abroad.

Marasigan testified that she was a 32 year-old unmarried sales representative in 1992 when she was introduced to appellant by her co-complainants. [3] Appellant promised Marasigan a job as a factory worker in Taiwan for a P5,000.00 fee. At that time, Marasigan had a pending application for overseas employment pending in a recruitment agency. Realizing that the fee charged by appellant was much lower than that of the agency, Marasigan withdrew her money from the agency and gave it to appellant. [4]

Marasigan paid appellant P5,000.00, but she was later required to make additional payments. By the middle of the year, she had paid a total of P23,000.00 on installment basis. [5] Save for two receipts, [6] Marasigan was not issued receipts for the foregoing payments despite her persistence in requesting for the same.

Marasigan was assured by appellant that obtaining a Taiwanese visa would not be a problem. [7] She was also shown a plane ticket to Taiwan, allegedly issued in her name. [8] Appellant issued Marasigan a photocopy of her plane ticket, [9] the original of which was promised to be given to her before her departure. [10]

Marasigan was never issued a visa. [11] Neither was she given the promised plane ticket. Unable to depart for Taiwan, she went to the travel agency which issued the ticket and was informed that not only was she not booked by appellant for the alleged flight, but that the staff in the agency did not even know appellant.

Later, Marasigan proceeded to the supposed residence of appellant and was informed that appellant did not live there. [12] Upon verification with the Philippine Overseas Employment Administration (POEA), it was revealed that appellant was not authorized to recruit workers for overseas employment. [13] Marasigan wanted to recover her money but, by then, appellant could no longer be located.

The prosecution sought to prove that Generillo and Del Rosario, the two other complainants in the illegal recruitment case, were also victimized by appellant. In lieu of their testimonies, the prosecution presented as witnesses Lilia Generillo, the mother of Imelda Generillo, and Victoria Amin, the sister of Del Rosario.

Lilia Generillo claimed that she gave her daughter P8,000.00 to cover her application for placement abroad which was made through appellant. [14] Twice, she accompanied her daughter to the residence of appellant so that she could meet her; however, she was not involved in the transactions between her daughter and appellant. [15] Neither was she around when payments were made to appellant. Imelda Generillo was unable to leave for abroad and Lilia Generillo concluded that she had become a victim of illegal recruitment.

The prosecution presented Victoria Amin, the sister of Rosamar Del Rosario, to show

that the latter was also a victim of illegal recruitment. Victoria Amin testified that appellant was supposed to provide her sister a job abroad. She claimed that she gave her sister a total of P10,000.00 which was intended to cover the latter's processing fee. [16]

Victoria Amin never met appellant and was not around when her sister made payments. She assumed that the money was paid to appellant based on receipts, allegedly issued by appellant, which her sister showed her. [17] Del Rosario was unable to leave for abroad despite the representations of appellant. Victoria Amin claimed that her sister, like Marasigan and Generillo, was a victim of illegal recruitment.

The final witness for the prosecution was Riza Balberte, [18] a representative of the POEA, who testified that appellant was neither licensed nor authorized to recruit workers for overseas employment, POEA certificate certification. [19]

Upon the foregoing evidence, the prosecution sought to prove that although two of the three complainants in the illegal recruitment case were unable to testify, appellant was guilty of committing the offense against all three complainants and, therefore, should be convicted as charged.

On the other hand, appellant, who was the sole witness for the defense, denied that she recruited the complainants for overseas employment and claimed that the payments made to her were solely for purchasing plane tickets at a discounted rate as she had connections with a travel agency. [20]

She denied that she was paid by Marasigan the amount of P23,000.00, claiming that she was paid only P8,000.00, as shown by a receipt. She further insisted that, through the travel agency, [21] she was able to purchase discounted plane tickets for the complainants upon partial payment of the ticket prices, the balance of which she guaranteed. According to her, the complainants were supposed to pay her the balance but because they failed to do so, she was obliged to pay the entire cost of each ticket.

The evidence presented by the parties were thus contradictory but the trial court found the prosecution's evidence more credible. On December 17, 1993, judgment was rendered by said court convicting appellant of both crimes as charged. [22]

In convicting appellant of illegal recruitment in large scale, the lower court adopted a previous decision of Branch 78 of the Metropolitan Trial Court of Parañaque as a basis for the judgment. Said previous decision was a conviction for estafa promulgated on July 26, 1993, [23] rendered in Criminal Cases Nos. 74852-53, involving the same circumstances in the instant case, wherein complainants Generillo and Del Rosario charged appellant with two counts of estafa. This decision was not appealed and had become final and executory.

In thus convicting appellant in the illegal recruitment case, the decision therein of the Regional Trial Court stated that the facts in the foregoing estafa cases were the same as those in the illegal recruitment case before it. It, therefore, adopted the facts and conclusions established in the earlier decision as its own findings of facts

and as its rationale for the conviction in the case before it. [24]

In Criminal Case No. 92-6153, the Makati court sentenced appellant to serve the penalty of life imprisonment for illegal recruitment in large scale, as well as to pay a fine of P100,000.00. Appellant was also ordered to reimburse the complainants the following payments made to her, viz.: (a) Marasigan, P23,000.00; (b) Generillo, P2,500.00; and (c) Del Rosario, P2,500.00.

In the same judgment and for the estafa charged in Criminal Case No. 92-6154, the Makati court sentenced appellant to suffer imprisonment of four (4) years and two (2) months of prision correccional, as minimum, to eight (8) years of prision mayor, as maximum, and to pay the costs.

In the instant petition, appellant seeks the reversal of the foregoing judgment of the Regional Trial Court of Makati convicting her of illegal recruitment in large scale and estafa. Specifically, she insists that the trial court erred in convicting her of illegal recruitment in large scale as the evidence presented was insufficient.

Moreover, appellant claims that she is not guilty of acts constituting illegal recruitment, in large scale or otherwise, because contrary to the findings of the trial court, she did not recruit the complainants but merely purchased plane tickets for them. Finally, she contends that in convicting her of estafa, the lower court erred as she did not misappropriate the money paid to her by Marasigan, hence there was no damage to the complainants which would substantiate the conviction.

We uphold the finding that appellant is guilty but we are, compelled to modify the judgment for the offenses she should be convicted of and the corresponding penalties therefor.

Appellant maintains that her conviction for illegal recruitment in large scale is erroneous. It is her view that in the prosecution of a case for such offense, at least three complainants are required to appear as witnesses in the trial and, since Marasigan was the only complainant presented as a witness, the conviction was groundless.

The Solicitor General also advocates the conviction of appellant for simple illegal recruitment which provides a lower penalty. The Court finds the arguments of the Solicitor General meritorious and adopts his position.

The Labor Code defines recruitment and placement as "x x x 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 x x x." [25]

Illegal recruitment is likewise defined and made punishable under the Labor Code, thus:

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. 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.

x x x 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 (P100,000.00) 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 (4) years nor more than eight (8) 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. x x x

[26]

During the pendency of this case, Republic Act No. 8042, otherwise known as the "Migrant Workers and Overseas Filipinos Act of 1995," was passed increasing the penalty for illegal recruitment. This new law, however, does not apply to the instant case because the offense charged herein was committed in 1992, before the effectivity of said Republic Act No. 8042. Hence, what are applicable are the aforecited Labor Code provisions.

It is evident that in illegal recruitment cases, the number of persons victimized is determinative. Where illegal recruitment is committed against a lone victim, the accused may be convicted of simple illegal recruitment which is punishable with a lower penalty under Article 39(c) of the Labor Code. Corollarily, where the offense is committed against three or more persons, it is qualified to illegal recruitment in large scale which provides a higher penalty under Article 39(a) of the same Code.

The position of the Solicitor General is that the conviction of appellant should be merely for the lesser offense of simple illegal recruitment. He submits that the Regional Trial Court of Makati erred in convicting appellant of illegal recruitment in large scale because the conviction was based on an earlier decision of the Metropolitan Trial Court of Parañaque where appellant was found guilty of estafa committed against Generillo and Del Rosario.

It is argued that the Makati court could not validly adopt the facts embodied in the decision of the Parañaque court to show that illegal recruitment was committed against Generillo and Del Rosario as well. Illegal recruitment was allegedly proven to have been committed against only one person, particularly, Elenita Marasigan. Appellant, therefore, may only be held guilty of simple illegal recruitment and not of such offense in large scale.