

FIRST DIVISION

[G.R. No. 232049, March 03, 2021]

**ADRIANO TOSTON Y HULAR, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

GAERLAN, J.:

This resolves the petition for review filed by Adriano Toston y Hular (Toston) against the affirmance^[1] by the Court of Appeals (CA) of his conviction^[2] for estafa and illegal recruitment, as defined and penalized in Article 315(2) of the Revised Penal Code, and Republic Act (R.A.) No. 8042 in relation to the Labor Code.

The Antecedents

Toston, among others, was charged on March 26, 2013 with estafa and illegal recruitment in separate Informations which read:

In Criminal Case No. 14-303962:

x x x x

That on or about June 19, 2010, in the City of Manila, Philippines, the said accused, representing themselves to have the capacity to contract, enlist and transport "Filipino Workers" for employment abroad, did then and there willfully and unlawfully, for a fee, recruit and promise employment/job placement abroad to Singapore as waitress, to MARY ANN O. SOLIVEN, without first having secured the required license or authority from the Department of Labor and Employment, and received the amount of Php50,000.00 as processing fee but failed to actually deploy said worker and failed to reimburse worker of the said amount in connection with said deployment of Mary Ann O. Soliven.

Contrary to law.

In Criminal Case No. 14-303963:

x x x x

That on or about July 7, 2010, in the City of Manila, Philippines, the said accused, conspiring, confederating and mutually helping each other did then and there wilfully, unlawfully, feloniously defraud MARY ANN O. SOLIVEN, in the following manner: the said accused by means of false manifestation and fraudulent representations which they made to said MARY ANN O. SOLIVEN, prior to and even simultaneous with the commission of the fraud, to the effect that they have the power and capacity to recruit and deploy her as waitress in Singapore, and could facilitate the processing of pertinent papers if given the necessary

amount to meet the requirements thereof, induced and succeeded in inducing said accused the amount of Php50,000.00, the strength of said manifestations and representations, said accused well knowing that the same were false and fraudulent and were made solely to obtain, as in fact they did obtain the amount of Php50,000.00, which amount once in their possession, with intent to defraud, misappropriated, misapplied and converted the same to their own personal use and benefit to the damage and prejudice of the said MARY ANN O. SOLIVEN, in the aforesaid amount of Php50,000.00, Philippine Currency.

Contrary to law.^[3]

Both cases were raffled to Branch 40 of the Regional Trial Court (RTC) of Manila, which ordered the consolidation thereof.^[4] On March 11, 2014, the RTC-Manila Branch 40 issued an Order of Arrest against the accused Toston, Ethel C. Cabasa a.k.a. Ethel Cabasa Gutierrez (Gutierrez) and Alvin Runas (Runas).^[5] On May 16, 2014, Toston was arrested at the office of Valesco SMS, Inc., in Taft Avenue, Manila.^[6] He was detained at the Manila City Jail.^[7] There is no indication from the record as to whether Gutierrez and Runas were arrested. On June 19, 2014, Toston filed a Motion to Consolidate manifesting that there are 10 other pending cases for illegal recruitment and estafa against him, Gutierrez, and Runas before the RTC of Manila; and praying that Criminal Case Nos. 14-303962 and 14-303963 be consolidated with these ten pending cases.^[8] The RTC-Manila Branch 40 granted Toston's motion.^[9] Consequently, the case was re-raffled to the branch where the case with the lowest docket number was pending, in this case, Branch 20. Upon arraignment, Toston pleaded not guilty to the charges in Criminal Case Nos. 14-303962 and 14-303963.^[10] Trial then proceeded as to the two aforementioned cases with Toston as the sole accused.

Evidence for the Prosecution

The prosecution presented the private complainant Mary Ann O. Soliven (Mary Ann) as its sole witness, after both parties agreed to stipulate on the testimony of her husband, Charles Soliven (Charles).^[11]

Mary Ann testified that she first met Toston on June 19, 2010, when she went to the office of Steadfast International Recruitment Corporation (Steadfast) to apply for a job as a waitress in Singapore.^[12] Mary Ann found Steadfast's website while browsing for overseas job openings on the internet.^[13] When she went to Steadfast's office in Malate, Manila, she transacted with Toston and Runas.^[14] According to Mary Ann, she was first interviewed by Runas for about five minutes.^[15] After that, Toston and Runas told her that she was eligible for an overseas job.^[16] Toston then gave her leave to go home and told her to wait for their call if she passed the interview.^[17] After about two to three weeks, Toston phoned Mary Ann to tell her that she passed the interview and that she needed to go back for her medical examination.^[18] Mary Ann thus returned to the Steadfast office, where Toston gave her a referral slip for the medical examination.^[19] On July 7, 2010, Gutierrez, who was General Manager of Steadfast, phoned Mary Ann to tell her that she passed the medical examination and that she should pay P50,000.00 as placement fee.^[20] That same day, at about 10:00 a.m., Mary Ann and Charles went

to the Steadfast office to pay the placement fee. Mary Ann paid the placement fee to Gutierrez, who issued an acknowledgment receipt signed by Runas.^[21] Gutierrez then told Mary Ann to wait at least a year for deployment.^[22] Mary Ann made regular follow-ups with Toston and Runas but she was never deployed.^[23] By November, Mary Ann called Toston for confirmation after reading an internet blog^[24] post about Steadfast engaging in illegal recruitment.^[25] Toston assured her that Steadfast was not engaged in illegal recruitment.^[26] Sometime in 2011,^[27] Mary Ann found more internet posts and a social media^[28] account of a certain Ka Susan Bantay OCW (Ka Susan) pointing to Steadfast as an illegal recruiter.^[29] This proved to be the last straw for Mary Ann, who went to the Steadfast office to withdraw her application.^[30] Among the documents returned to her was the result of her medical examination, which showed that she was unfit to work abroad.^[31] Seeking the refund of her placement fee payment, Mary Ann went to the office of Ka Susan for assistance.^[32] Ka Susan referred Mary Ann to the police authorities to file a formal complaint.^[33] Upon the filing of her complaint, Mary Ann discovered that Steadfast's registration with the Philippine Overseas Employment Agency (POEA) was temporarily suspended and that Toston had been deemed resigned from Steadfast as of August 13, 2007.^[34] This prompted Mary Ann to file a criminal complaint before the City Prosecutor's Office of Manila.^[35] On September 16, 2011, after Mary Ann had filed a complaint with the City Prosecutor, Gutierrez executed a promissory note for the return of the placement fee payment.^[36]

The prosecution likewise submitted the following pieces of documentary evidence: August 19, 2014 Certification issued by the POEA, August 27, 2014 Memorandum issued by the POEA, Complaint-Affidavit of Mary Ann O. Soliven, Employment Agreement Contract, Acknowledgment Receipt dated July 7, 2010, Medical Examination Certificate, August 8, 2011 Letter of Susan K to PS/Supt. Gilbert Sosa, Complaint Sheet executed by Mary Ann O. Soliven before the CIDG-PNP, and Request for POEA Verification on the registration status of Toston and Steadfast.^[37]

Evidence for the Defense

Its demurrer^[38] having been denied,^[39] the defense proceeded with the presentation of its two witnesses, petitioner Toston and Teresita G. Taladtad.^[40]

Toston testified that he worked for Steadfast from 2002 to 2007, first as a Staff Assistant and, after a short lay-off, as a Recruitment Assistant.^[41] As a Recruitment Assistant his duties included discussing requirements with overseas job applicants, screening applications, and scheduling of interviews.^[42] His designation as a Recruitment Assistant was reported to the POEA.^[43] After his stint at Steadfast he worked as a telemarketer and administrative assistant; but in 2009 he returned to Steadfast as an Administrative Assistant, doing mostly clerical work and interacting with persons coming into the office.^[44] When asked if Steadfast reported his re-employment as Administrative Assistant with the POEA as required by pertinent regulations, Toston admitted that he did not know, as he did not raise the matter with Steadfast management.^[45] Likewise, Toston did not know if Steadfast reported his resignation in 2011 to the POEA.^[46]

Toston admitted to interacting with Mary Ann sometime in June 2010, but asserted that he only asked Mary Ann her purpose in coming to the office.^[47] When Mary Ann said that she wanted to apply for an overseas job, Toston immediately referred her to Runas, who was then the Recruitment Assistant.^[48] Toston also denied talking to Mary Ann about the requirements for overseas employment.^[49] However, he admitted to handing over the employment contract for Mary Ann to sign; but claimed that he was not present when Mary Ann actually signed the same.^[50] As regards the payment of the placement fee, Toston testified that he neither saw nor received the payment for, at that point, Mary Ann was dealing exclusively with Runas (the recruitment assistant) and Gutierrez (the general manager).^[51] Furthermore, he had already resigned from Steadfast when Mary Ann withdrew her application.^[52] Toston likewise testified that he did not know about the suspension of Steadfast's license.^[53] In fine, Toston claimed that he only interacted with Mary Ann personally on two occasions: first, when he referred her to Runas; and second, when he handed over the employment contract to her.^[54]

The trial court sums up Taladtad's testimony in this manner:

MS. TERESITA TALADTAD is a POEA labor and employment officer and she brought to Court the requested documents relative to the appointment papers of accused Toston.

Per the files of the POEA, accused Toston was considered resigned as of September 14, 2011, the date the POEA received the letter of Ms. Gutierrez to the POEA in the resignation of the accused Toston.

Per the files of the POEA accused Toston was appointed recruitment assistant on March 30, 2009. In so far as the POEA is concerned the accused was recruitment assistant from June 11, 2011 to September 14, 2011 and there is no information in the POEA files that he resigned in the interregnum.

The accused was employed with the East West Recruitment Agency from July 8, 2011 to March 19, 2012.

The POEA has no files whatsoever that accused was employed as administrative assistant of the STEADFAST.^[55]

The documentary evidence for the defense consisted of the following:^[56] 1) November 29, 2011 Resolution of the Office of the Prosecutor of Manila; 2) Articles of Incorporation of Steadfast; 3) 2011 General Information Sheet of Steadfast; 4) Acknowledgment Receipt for P50,000.00 received by Runas from Mary Ann; 5) Promissory Note executed by Ethel Gutierrez; 6) August 17, 2011 Certification issued by the POEA; 7) Resignation Letter of Adriano H. Toston from Steadfast dated June 3, 2011; 8) Certificate of Employment from EastWest Placement Center, Inc. dated February 25, 2012; 10) February 20, 2015 Certification issued by the POEA; 11) Letter dated September 19, 2011 from POEA addressed to Ethel C. Gutierrez; and 12) Letter dated September 1, 2011 from Steadfast addressed to POEA with resignation letter of Toston attached.

Ruling of the Trial Court

The trial court found Toston guilty of illegal recruitment and estafa, *viz.*:

PREMISED ON THE FORGOING CONSIDERATIONS, the Court finds accused Adriano Toston GUILTY beyond reasonable doubt of illegal recruitment in Criminal Case No. 14-303962 and sentences him to suffer the penalty of imprisonment of 6 years and 1 day and to pay a fine of P200,000.00.

In Criminal Case No. 14-303963 for estafa, the Court finds the accused GUILTY beyond reasonable doubt and sentences him to serve the indeterminate penalty of 4 years and 1 day of prision correccional as minimum to 8 years of prision mayor as maximum, to restitute Mary Ann Soliven the amount of P50,000.00 plus 6% interest from the filing of information in Court. The entire amount shall earn 6% interest per annum upon finality of the judgment until the whole amount is satisfied.

SO ORDERED.^[57]

The trial court held that Toston committed acts which convinced Mary Ann to part with her money in consideration of deployment to Singapore as a waitress. Specifically, Toston answered her queries about the online job posting and assured her that she was qualified therefor. Moreover, not only did Toston ask her to report to Steadfast for her medical examination, he also gave her the referral slip for said examination.^[58] The payment of the placement fee was made in Toston's presence; and he was the one who handed over the employment contract for Mary Ann to sign.^[59] Although Toston did not receive the placement fee, he may still be held guilty of illegal recruitment because profit is not an element of recruitment as defined in Article 13(b) of the Labor Code.^[60] When Mary Ann asked Toston about the allegations of illegal recruitment against Steadfast, he assured her that said allegations were untrue.^[61] The trial court gave full credence to Mary Ann's testimony, finding no motive or ill will on her part against Toston.^[62]

The trial court also dismissed Toston's defense that he was a mere administrative assistant who had no direct involvement in Mary Ann's application, ruling that the acts of recruitment as defined in the Labor Code may be committed even by a rank-and-file employee; and that employees of corporations found to be engaged in illegal recruitment may be held liable as principals if it be proven that they actively and consciously participated therein. The trial court held that Toston, in his capacity as administrative assistant, committed acts of illegal recruitment in his dealings with Mary Ann; hence, he can be held liable for illegal recruitment.

Since Mary Ann could no longer locate Toston when she demanded the return of her placement fee, he was likewise guilty of estafa.^[63]

Toston filed a motion for reconsideration,^[64] which the trial court denied in an order dated November 27, 2015.^[65] Toston appealed his conviction through notice of appeal dated January 27, 2016.^[66]

Ruling of the Court of Appeals

The CA sustained the guilty verdict against Toston; but modified the penalty, *viz.*: