

## FIRST DIVISION

[ G.R. No. 195666, January 20, 2016 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FE ABELLA Y BUHAIN, ACCUSED-APPELLANT.**

### D E C I S I O N

**LEONARDO-DE CASTRO, J.:**

For Our consideration is an appeal from the Decision<sup>[1]</sup> dated September 30, 2010 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03974, which affirmed with modification the Decision<sup>[2]</sup> dated March 26, 2009 of the Regional Trial Court (RTC), Manila City, Branch 52, in Criminal Case No. 04-225062, which found accused-appellant Fe Abella y Buhain (Abella) guilty of Illegal Recruitment in Large Scale.

The Information<sup>[3]</sup> reads:

That in or about and during the period comprised between October 8, 2003 and March 18, 2004, inclusive, in the City of Manila, Philippines, the said accused conspiring and confederating with another whose true name, real identity and present whereabouts is still unknown, and mutually helping each other, representing herself to have the capacity to contract, enlist and transport Filipino workers for employment abroad, did then and there willfully, unlawfully, and feloniously for a fee, recruit and promise employment/job placement to the following persons:

Mary Jean Mateo y Sanchez  
Grace Marcelino y dela Pena  
Nobella Castro y Fernandez  
Imelda Miguel y Factor  
Lolita Pansoy y Garcia  
Ester Castro y Pamisttan  
Janice Belvis y Morales  
Ruby Badua y Cabacungan  
Visitation Rosete y Cedron  
Generoso Gumpal y Bangloy  
Fernando Callang y Buhanget  
Joselito Danver Huta y Catano

as Laundrywomen/Laundrymen and Waiter in Istanbul, Turkey and Dubai, without first having secured the required license or authority from the Department of Labor and Employment, charged or accept directly or indirectly from said complainants amounts which are in excess of or greater than those specified in the schedule of allowable fees prescribed by the Department of Labor and Employment under Memorandum Order No. 5, Series of 1985 and having failed to deploy aforesaid complainants,

continuously fails to reimburse despite demands, the expenses they incurred in connection with the documentation and processing for their deployment.

Upon arraignment, Abella, assisted by counsel, pleaded not guilty to the offense charge.

In the course of the trial, the prosecution presented Imelda F. Miguel (Miguel), Grace P. Marcelino (Marcelino), Fernando B. Callang (Callang), Mildred Versoza (Versoza), and Senior Police Officer (SPO) 1 Jaime Bunag (Bunag) as witnesses.

Miguel testified that she came to know Abella through Zeny Agpalza (Agpalza) and Lina Mateo (Mateo), who informed her that Abella could help her get work abroad. Interested, Miguel met Abella at the latter's office, bearing the name Rofema Business Consultancy (RBC), at 1807 Nakpil St., Barangay 697, Malate, Manila. During their meeting, Abella offered Miguel work as a laundry woman in Istanbul, Turkey, with a salary of \$600.00 to \$700.00 but Miguel must undergo training in laundry service and pay a placement fee of P100,000.00. Miguel, however, was able to raise and pay only P30,000.00<sup>[4]</sup> as placement fee on November 17, 2003 for which Abella issued a cash voucher signed by Abella herself in Miguel's presence. Miguel also claimed that she underwent training in laundry service for five days at the Executive Technical Consultants Trade Test and Training Center, valued at P5,000.00, which was sponsored by Abella. Miguel was issued a certification after said training. Abella discussed with Miguel the details of the latter's job abroad and provided Miguel with a photocopy of their written agreement, together with the certificate evidencing registration by Abella of the business name of RBC. Until the day that Miguel gave her testimony before the RTC, Abella, contrary to her representation and promise, was not able to deploy Miguel as a laundrywoman in Istanbul, Turkey, and neither did Abella return the placement fee of P30,000.00 which Miguel had paid.<sup>[5]</sup>

Marcelino narrated that she came to know Abella through Rosette Danao (Danao). Danao first recruited Marcelino to work as a domestic helper in Saipan, but later turned over Marcelino's application to Agpalza who was in charge of those applying for jobs in Turkey. Danao and Agpalza both referred to Abella as their Manager. Marcelino paid a total of P50,000.00<sup>[6]</sup> for the processing of her papers in four installments: P10,000.00 on November 24, 2003; P15,000.00 on December 3, 2003; P10,000.00 on December 23, 2003, and P15,000.00 on January 15, 2004, all personally received by Abella either at the RBC office or at McDonald's, Ermita, and evidenced by vouchers signed by Abella. Nothing happened to Marcelino's application and the amounts she had paid to Abella were not returned to her.<sup>[7]</sup>

According to Callang, he was recruited by Danao, Abella's agent, who brought him to the RBC office in Malate, Manila. At the RBC office, Abella told Callang of the job order for laundryman in Istanbul, Turkey with a monthly salary of \$600.00 and for which the placement fee was P65,000.00. Callang paid to Abella P10,000.00 on November 17, 2003; P10,000.00 on December 23, 2003; and P20,000.00 on January 9, 2004, for a total of P40,000.00,<sup>[8]</sup> evidenced by a voucher signed by Abella in Callang's presence. The first two payments were made at the RBC office while the last payment was at McDonald's, Ermita. Callang was not deployed for

employment abroad, neither was he able to recover the amount he paid to Abella.

Versoza was an employee at the Licensing Division of the Philippine Overseas Employment Administration (POEA). Versoza recounted that upon the instruction of Yolanda Paragua (Paragua), Officer-in-Charge (OIC) of the POEA Licensing Division, she verified from the database and other records of their office whether Abella/RBC had license to recruit workers for employment abroad. Versoza found out that Abella/RBC had no such license and she prepared a Certification to that effect, which was signed by OIC Paragua in her presence. In compliance with the *subpoena duces tecum* issued by the RTC, Versoza personally appeared before the trial court to identify OIC Paragua's signature on the Certification.<sup>[9]</sup>

SPO1 Bunag was the investigator assigned to the case and affirmed on the witness stand that he was the one who took down the private complainants' *Sinumpang Salaysay Pag-aresto*, and prepared Abella's Booking Sheet and Arrest Report and letter of referral for inquest dated March 19, 2004.

Only Abella herself testified for the defense.

Before Abella took the witness stand, her counsel, Atty. Rodrigo Marinas, moved that the following private complainants: Mary Jean S. Mateo, Nobella F. Castro, Lolito G. Pansoy, Ester P. Castro, Janice M. Belvis, Ruby C. Badua, Generoso B. Gumpal, and Joselito Danver C. Huta, be provisionally dropped as such from the Information for their repeated failure to appear and testify in support of their complaints.<sup>[10]</sup> Without objection from Assistant City Prosecutor Francisco L. Salomon, the RTC granted the defense's motion, thus, leaving Miguel, Marcelino, and Callang as private complainants.

Abella anchored her defense on denial. Abella alleged that she had been working as a cashier since November 11, 2004 at RBC, a travel agency registered with the Department of Trade and Industry. As cashier at RBC, Abella's main duty was to receive payments from clients for which she issued cash vouchers. Abella claimed that she did not personally meet the clients nor did she directly receive money from them, as the clients coursed their payments through Agpalza, an RBC agent. Agpalza would then turn over the payments to Abella, for which the latter issued cash vouchers; and Abella would subsequently hand over the payments to RBC owner, Elizabeth Reyes (Reyes). Abella disputed private complainants' assertion and insisted that she did not promise private complainants employment abroad. During her re-direct examination, Abella refuted her purported arrest and confrontation with private complainants. Abella maintained that she voluntarily went with Agpalza to the police headquarters and that she and Agpalza were detained at the second floor while private complainants were kept at the ground floor of the police headquarters.

On March 26, 2009, the RTC rendered a Decision with the following verdict:

**WHEREFORE,** the Court finds the accused FE ABELLA y BUHAIN guilty beyond reasonable doubt of the crime of Illegal Recruitment in large scale and imposes upon her the penalty of life imprisonment and a fine of Php100,000.00.

FE ABELLA y BUHAIN is also ordered to return to, or refund the sums of money she had received from the following private complainants: a) Imelda Miguel the sum of Php30,000.00; b) Fernando Callang the amount of Php40,000.00; and c) Grace Marcelino the amount of Php50,000.00.

With costs against the accused.<sup>[11]</sup>

Aggrieved, Abella appealed before the Court of Appeals.

The Court of Appeals, in a Decision dated September 30, 2010, affirmed the RTC judgment of conviction but with the modification increasing the amount of fine imposed against Abella. The dispositive portion of the said Decision reads:

**WHEREFORE**, premises considered, the appeal is **DENIED**. The Decision dated 26 March 2009 of the Regional Trial Court of Manila, Branch 52, in Criminal Case No. 04-225062 finding accused-appellant Fe Abella y Buhain guilty beyond reasonable doubt of illegal recruitment in large scale, sentencing her to suffer the penalty of life imprisonment and ordering her to pay a fine and to return to private complainants Imelda Miguel, Fernando Callang and Grace Marcelino the amounts of Php30,000.00, Php40,000.00 and Php50,000.00, respectively, is hereby **AFFIRMED** with **MODIFICATION** in that the amount of fine is increased from Php100,000.00 to Php500,000.00. Costs against accused-appellant.

<sup>[12]</sup>

Hence, the present appeal.

In her Supplemental Brief, Abella contends that the prosecution failed to prove her guilt beyond reasonable doubt as the first element of illegal recruitment in large scale, *i.e.*, the accused undertook a recruitment activity under Article 13(b) of the Labor Code or any prohibited practice under Article 34 of the same Code, is wanting. Abella points out that: (a) it was not Abella who enticed private complainants to apply for work overseas given that by private complainants' own testimonies, they learned about the job opportunities abroad not from Abella, but from Agpalza, Mateo, and Danao, who were so persuasive that private complainants travelled from their respective provinces to Manila just to meet Abella; (b) if it were true that Abella received money from private complainants, she would have already fled after getting private complainants' money so as to evade arrest; and (c) the prosecution presented a mere photocopy of the handwritten agreement supposedly executed by Abella in Miguel's favor, and considering that the contents of such agreement are in issue in this case, the RTC wrongfully accorded much weight to such evidence.

We find no merit in the instant appeal.

To constitute illegal recruitment in large scale, three elements must concur: (a) the offender has no valid license or authority required by law to enable him to lawfully engage in recruitment placement of workers: (b) the offender undertakes any of the activities within the meaning of "recruitment and placement" under Article 13(b) of

the Labor Code, or any of the prohibited practices enumerated under Article 34 of the same Code (now Section 6 of Republic Act No. 8042, otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995); and (c) the offender committed the same against three or more persons, individually or as a group.<sup>[13]</sup>

Article 13(b) of the Labor Code defines "recruitment and placement" 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." It also provides 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."

Article 38 of the same Code particularly defines "illegal recruitment" as follows:

*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 Department 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.

Republic Act No. 8042 broadened the concept of illegal recruitment under the Labor Code and provided stiffer penalties, especially if it constitutes economic sabotage, either illegal recruitment in large scale or illegal recruitment committed by a syndicate. Under Section 6 of Republic Act No. 8042, the following acts constitute "illegal recruitment":

*SEC. 6. Definition.* - For purposes of this Act, illegal recruitment shall mean **any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referring, contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by a non-licensee or non-holder of authority** contemplated under Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines: *Provided, That any such non-licensee or non-holder who, in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed so engaged. It shall likewise include the following acts, whether committed by any person,*