

## SECOND DIVISION

[ G.R. No. 185277, March 18, 2010 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
RODOLFO GALLO, ACCUSED-APPELLANT.**

### D E C I S I O N

**PEREZ, J.:**

This is an appeal from the Decision<sup>[1]</sup> dated 31 January 2008 of the Court of Appeals, affirming, with modification, the Judgment<sup>[2]</sup> of conviction for the crimes of illegal recruitment and *estafa* rendered by the Regional Trial Court of Manila, Branch 34.

Appellant Rodolfo Gallo (Gallo), together with Pilar Manta (Manta) and Fides Pacardo (Pacardo), was originally charged with illegal recruitment in large scale and thirty four (34) counts of *estafa* in thirty five (35) separate informations<sup>[3]</sup> filed before the Regional Trial Court of Manila, Branch 34.

When arraigned, all three accused pleaded not guilty to the charges.<sup>[4]</sup>

In the course of the trial of the cases, some of the private complainants, one after another, moved for the withdrawal of their respective complaints<sup>[5]</sup> while others failed to appear during the scheduled hearings despite due notice.<sup>[6]</sup> Hence, the public prosecutor moved for the provisional dismissal<sup>[7]</sup> of their cases until only three private complainants remained.

The remaining private complainants, Reynaldo Panlilio (Panlilio), Ian Fernandez (Fernandez) and Zenaida Filomeno (Filomeno), testified for the prosecution.

Fernandez narrated that at around 9:00 a.m. on 5 June 2001, he was at the MPM International Recruitment Agency (MPM) with his friend Reynaldo Panlilio applying for a job overseas.<sup>[8]</sup> He recounted that he was able to talk first with accused Gallo, then with the owner of MPM, Mardeolyn Martir (Martir).<sup>[9]</sup> Gallo informed him that if he pays P45,000.00, he would be able to leave for Korea in two to three months' time.<sup>[10]</sup> Thus, he returned the following day with P45,000.00 and gave the amount to Martir.<sup>[11]</sup> Gallo issued a receipt covering the amount but this was later on replaced with a promissory note.<sup>[12]</sup>

Panlilio narrated that on 5 June 2001, he went to the offices of MPM in Ermita, Manila, to apply for a job as a factory worker in Korea.<sup>[13]</sup> He testified that he talked to Martir who told him to come back the next day with P45,000.00 for the processing of his application.<sup>[14]</sup> Upon arriving the following day (6 June 2001), he was met by accused Gallo and upon the instruction of Martir, Panlilio gave the

money to Gallo.<sup>[15]</sup> Unable to leave for Korea despite the lapse of several months, Panlilio demanded the return of his money.<sup>[16]</sup> The agency, however, requested a month within which to refund the money<sup>[17]</sup> and the receipt issued for the P45,000.00 he paid was replaced with a promissory note.<sup>[18]</sup>

While in the province, he learned that the agency had closed, so he went back to Manila to verify this information.<sup>[19]</sup> He found out that the agency had transferred its offices to the Prudential Bank Building in Sta. Cruz, Manila.<sup>[20]</sup> There, he and about 30 to 40 other victims of the agency arrested the three accused by virtue of a citizen's arrest.<sup>[21]</sup> The accused were first brought to the Sta. Cruz Police Station, then to the National Bureau of Investigation (NBI), where a formal complaint was filed against them.<sup>[22]</sup>

Private complainant Filomeno testified that she learned from a friend that MPM is accepting applicants for work in Korea.<sup>[23]</sup> She went to the agency sometime in May 2001 and was initially met by accused Manta who instructed her to talk to Martir.<sup>[24]</sup> Inside the latter's office, she found Gallo and Martir accepting applicants for overseas employment.<sup>[25]</sup> She narrated that she initially paid P15,000.00 as processing fee to Gallo and Martir who both counted the money in front of her.<sup>[26]</sup> She later on paid another P5,000.00, both of which amounts were covered by a receipt.<sup>[27]</sup> Gallo and Martir told her that in September 2001, she would be able to leave for Korea where she would be working as a factory worker with a monthly salary of US\$500.00 plus overtime pay.<sup>[28]</sup> Because she failed to leave as promised, she called the agency on at least four occasions to follow up her application, but she was unable to talk to either accused Gallo or Martir.<sup>[29]</sup> When she went to the agency to personally inquire about the status of her application, she found out that the accused had been arrested so she proceeded to the NBI to file a complaint.<sup>[30]</sup>

The prosecution likewise presented documentary evidence consisting of the promissory notes and official receipts issued by the agency to the private complainants.<sup>[31]</sup> Also presented was a certification dated 23 August 2002, issued by the Philippine Overseas Employment Agency, stating that according to its records, the New Filipino Manpower Development and Services, Inc. had an expired license and that its application for the re-issuance of a new license was denied.<sup>[32]</sup> It appears that MPM had earlier applied for a license but its application was not granted; hence, it changed its name to New Filipino Manpower Development and Services, Inc.<sup>[33]</sup>

For his defense, appellant Gallo alleged that he was not an employee of MPM but was himself an applicant for overseas work.<sup>[34]</sup> According to him, someone from their province informed him that MPM was recruiting applicants to be employed as factory workers in Korea, so he applied sometime in November 2000.<sup>[35]</sup> He further testified that he paid P20,000.00 for the processing of his visa but was not issued a receipt; his payment was merely recorded in the agency's logbook.<sup>[36]</sup> When his visa was issued, the agency asked for an additional payment of P40,000.00 for his plane fare, but he was unable to produce the amount, so another person was sent abroad in his stead.<sup>[37]</sup> He was advised by Martir to wait because the visa issued to

him earlier will be replaced by a trainee visa.<sup>[38]</sup> As a result, he was often seen at the office of Martir because he would often go there to follow up his application.<sup>[39]</sup> He denied having received money from or having issued any receipt to private complainants.<sup>[40]</sup>

Appellant, however, admitted having executed a *Kontra Salaysay* and a Rejoinder Affidavit wherein it was stated that he is merely a utility worker of New Filipino Manpower Development and Services, Inc., and, as such, his only duties therein consist of repair, janitorial and messengerial jobs.<sup>[41]</sup> He explained the conflict in his statements by claiming that the aforesaid documents were prepared by a lawyer from the NBI and he signed them without reading their contents.<sup>[42]</sup> He, nevertheless, disclosed during his testimony that the personal circumstances stated in the documents were gathered by the NBI from him.<sup>[43]</sup>

Finding that the evidence for the prosecution sufficiently established the criminal liability of appellant, the trial court rendered a decision on 10 April 2003 convicting him of the crimes charged. Accused Manta and Pacardo were acquitted for insufficiency of the evidence presented against them.<sup>[44]</sup> The dispositive portion of the decision, in part, reads:

In Criminal Case No. 02-200788:

Finding Rodolfo Gallo to have participated in illegally recruiting the three complainants, Ian Fernandez, Reynaldo Panlilio and Zenaida Filomeno, he is hereby found GUILTY of the crime of Illegal Recruitment without any mitigating nor aggravating circumstance attendant to its commission and is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of P500,000.00.

In Criminal Case No. 02-200803:

Finding Rodolfo Gallo having conspired and confederated with another person not charged in this Information in defrauding Ian Fernandez, he is hereby found Guilty of the crime of *Estafa* without any mitigating nor aggravating circumstance attendant to its commission, granting him the benefit of the Indeterminate Sentence Law he is hereby sentenced to suffer an indeterminate prison term ranging from four (4) years two (2) months of *prision correccional* to ten (10) years of *prision mayor*. He is hereby ordered to indemnify Ian Fernandez the sum of P45,000.00 representing the amount embezzled.

In Criminal Case No. 02-200810:

Finding Rodolfo Gallo having conspired and confederated with another person not charged in this Information in defrauding Zenaida Filomeno, he is hereby found Guilty of the crime of *Estafa* without any mitigating nor aggravating circumstance attendant to its commission, granting the accused the benefit of the Indeterminate Sentence Law, he is hereby sentenced to suffer an indeterminate prison term of ranging from four (4) years two (2) months of *prision correccional* to eight (8) years of *prision*

*mayor*. He is hereby ordered to indemnify the victim Zenaida Filomeno the sum of P20,000.00 representing the amount embezzled.

In Criminal Case No. 02-200812:

Finding Rodolfo Gallo having conspired and confederated with another person not charged in this Information in defrauding Reynaldo Panlilio he is hereby found Guilty of the crime of *Estafa* without any mitigating nor aggravating circumstance attendant to its commission, granting him the benefit of the Indeterminate Sentence Law he is hereby sentenced to suffer an indeterminate prison term ranging from four (4) years two (2) months of *prision correccional* to ten (10) years of *prision mayor*. He is hereby ordered to indemnify Reynaldo Panlilio the sum of P45,000.00 representing the amount of money embezzled.<sup>[45]</sup>

In view of the penalty imposed, the case was elevated to this Court on automatic review. In accordance with our ruling in *People v. Mateo*,<sup>[46]</sup> the Court resolved to transfer the cases to the Court of Appeals for intermediate review.

On 31 January 2008, the Court of Appeals rendered the Decision now subject of this review. The dispositive portion of which provides:

WHEREFORE, judgment is hereby rendered as follows:

I. The judgment of the trial court in Criminal Case No. 02-200788 finding the accused-appellant Rodolfo Gallo guilty of Illegal Recruitment in Large Scale and sentencing him to life imprisonment, as well as to pay a fine of Five Hundred Thousand Pesos is AFFIRMED.

The judgments in Criminal Cases Nos. 02-200803 and 02-200812 sentencing the accused-appellant to suffer an indeterminate prison term of four (4) years, two (2) months of *prision correccional* to ten (10) years of *prision mayor* is AFFIRMED with the following MODIFICATION:

In additional to the P45,000.00 each to be paid by the accused-appellant to Ian Fernandez and Reynaldo Panlilio as actual damages; the accused-appellant is also ordered to pay legal interest on the said amount of P45,000.00 from the time of the filing of the Information until fully paid.

II. The judgment in Criminal Case No. 02-200810 finding the accused-appellant guilty of estafa is MODIFIED, and the accused-appellant is hereby sentenced to an indeterminate penalty ranging from one (1) year, eight (8) months and twenty-one (21) days of *prision correccional* minimum to five (5) years, five (5) months and [eleven] (11) days of *prision correccional* maximum. The accused-appellant shall pay Zenaida Filomeno P20,000.00 by way of actual damages. In addition, the accused-appellant shall also pay legal interest on the said amount of P20,000.00 from the time of filing of the Information until fully paid.

In all four cases, the accused-appellant Rodolfo Gallo shall be credited

with the full extent of his preventive imprisonment pursuant to Article 29 of the Revised Penal Code. Costs against accused-appellant.<sup>[47]</sup>

Hence, the instant petition.

On 21 January 2009, the Court resolved to require the parties to file their respective supplemental briefs, if they so desire, within thirty (30) days from notice.<sup>[48]</sup> Appellant filed a Manifestation dated 18 March 2009 stating that he will no longer file a supplemental brief and is adopting his Appellant's Brief as his Supplemental Brief.<sup>[49]</sup> The Office of the Solicitor General likewise manifested that it would no longer file a supplemental brief.<sup>[50]</sup>

In his Brief, appellant assigns the following as errors committed by the trial court:

#### I

THE COURT A *QUO* ERRED IN GIVING MUCH WEIGHT AND CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES.

#### II

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THREE COUNTS OF ESTAFA NOTWITHSTANDING THE PATENT ABSENCE OF CRIMINAL INTENT ON THE PART OF THE LATTER.

#### III

THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME OF ILLEGAL RECRUITMENT NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE ALL THE ESSENTIAL ELEMENTS OF THE CRIME CHARGED.<sup>[51]</sup>

Appellant, in essence, claims that the prosecution failed to establish his guilt beyond reasonable doubt.

The appeal must fail. We find no valid grounds to reverse the decision of the Court of Appeals affirming the lower court's judgment of conviction.

Well-settled is the rule that the issue of credibility is the domain of the trial court which had the opportunity to observe the deportment and manner of the witnesses as they testified.<sup>[52]</sup> The findings of facts of a trial court, arrived at only after a hearing and evaluation of the testimonies of witnesses, certainly deserve respect by an appellate court.<sup>[53]</sup> Unless it plainly overlooked certain facts of substance and value which, if considered, may affect the result of the case, appellate courts will not disturb the findings of the trial court on the issue of credibility of witnesses, it being in a better position to decide the question, having heard and observed the witnesses themselves.<sup>[54]</sup>