

THIRD DIVISION

[G.R. No. 182232, October 06, 2008]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
NENITA B. HU, ACCUSED-APPELLANT.**

D E C I S I O N

CHICO-NAZARIO, J.:

This is a Petition for Review on *Certiorari* filed by accused-appellant Nenita B. Hu (Hu) seeking to reverse and set aside the Decision^[1] of the Court of Appeals dated 9 October 2007 in CA-G.R.-CR.-H.C. No. 02243, affirming with modification the Decision^[2] dated 4 January 2005 of the Regional Trial Court (RTC) of Makati City, Branch 66, in Criminal Case No. 03-356. The RTC in its Decision found Hu guilty beyond reasonable doubt of the crime of illegal recruitment in large scale, as defined and penalized under Section 7(b) of Republic Act No. 8042,^[3] and accordingly, sentenced her to suffer the penalty of life imprisonment, to pay the fine of P500,000.00, and to indemnify private complainants Paul Abril (Abril), Joel Panguelo (Panguelo) and Evangeline Garcia (Garcia) in the amounts of P44,000.00, P50,000 and P50,000, respectively. The decretal part of the assailed Court of Appeals Decision reads:

Wherefore, in the light of the foregoing disquisitions, the decision of the Regional Trial Court of Makati City, Branch 66, in Criminal Case No. 03-856, finding appellant Nenita B. Hu, guilty beyond reasonable doubt of the crime charged, is hereby **AFFIRMED with MODIFICATION.**

As modified, the award of actual damages in the amount of P50,000 in favor of Evangeline Garcia, is **DELETED.**^[4]

The antecedent facts are as follows:

An Information^[5] for Illegal Recruitment in Large Scale was filed against Hu and Ethel V. Genoves (Genoves) which reads:

The undersigned Prosecutor accuses Ethel V. Genoves a.k.a. Merry Ann Genoves and Nenita B. Hu, of the crime of Violation of Section 6 penalized under Section 7(b) of RA 8042^[6] (Illegal Recruitment in Large Scale) committed as follows:

That on or about the 9th day of October 2001, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and both of them helping and aiding one another, did then and there willfully, unlawfully and feloniously recruit, promise employment/job placement abroad for an overseas employment and collect fees from the following persons to wit:

NOEL P. DELAYUN JOEY F. SILAO
JOEL U.PAUL C. ABRIL
PANGUELO
EVANGELINE E.ERIC V. ORILLANO
GARCIA

thus in large scale amounting to economic sabotage without any license or authorized by the POEA of the Department of Labor and Employment to recruit workers for an overseas employment.

Upon arraignment, Hu assisted by counsel entered a plea of not guilty while Genoves remained at large.^[7] Subsequently, trial on the merits ensued. While the Information for illegal recruitment named several persons as having been promised jobs by Hu and Genoves, only four of them - Panguelo, Garcia, Abril and Orillano -- testified.

Hu was the President of Brightturn International Services, Inc. (Brightturn), a land-based recruitment agency duly licensed by the Philippine Overseas Employment Agency (POEA) to engage in the business of recruitment and placement of workers abroad, with principal address at No. 1916 San Marcelino St., Malate, Manila. Brightturn was authorized by the POEA to recruit, process and deploy land-based workers for the period 18 December 1999 to 17 December 2001.^[8]

Genoves worked as a consultant and marketing officer of Brightturn. Aside from her stint at Brightturn, Genoves was also connected with Riverland Consultancy Service (Riverland), another recruitment agency located at Room No. 210, LPL Building, Sen. Gil Puyat Avenue, Makati City.

Private complainants Orillano, Panguelo, Abril and Garcia sought employment at Brightturn for the positions of factory worker and electronic operator in Taiwan.^[9] Notwithstanding private complainants' compliance with all of the pre-employment requirements, including the payment of placement fees, they were not able to leave the country to work abroad.

Sometime in June 2001, Panguelo was informed by a friend that Brightturn was hiring factory workers for Taiwan. When Panguelo went to Brightturn, he was promised employment abroad by Hu for P50,000.00. Upon Hu's instruction, Panguelo paid in full the placement fee in the amount of P50,000.00 to Genoves. The payment was evidenced by an Official Receipt dated 16 October 2001 bearing Genoves' signature. Panguelo waited for three years to be deployed to Taiwan. His waiting was all for naught. Thus, Panguelo decided to abort his application and demanded from Hu the return of the amount he paid for the placement fee, but Hu could no longer return the money.^[10]

Also sometime in September 2001, Abril went to Brightturn to apply as a factory worker in Taiwan. At Brightturn, Abril was entertained by Hu who oriented him on the necessary requirements for application which included a valid passport, National Bureau of Investigation (NBI) Clearance and ID pictures. After complying with the documentary requirements, Abril was required by Hu to pay the placement fee to Genoves in the amount of P44,000.00. As shown in Official Receipts dated 9 October 2001 and 26 October 2000, which were signed by Genoves, Abril paid the whole amount of P44,000.00 as placement fee. Abril was assured by Hu that he would be

deployed to Taiwan by December 2001 which was subsequently reset to April 2002. Despite several postponements, Abril was not able to leave the country.^[11]

For his part, Orillano came to know of Brighturn thru Genoves. Orillano was interviewed at Brighturn by a Taiwanese principal in October 2001. After the interview, Hu informed Orillano to submit a medical certificate, NBI clearance and passport; and to pay the requisite placement fee in the amount of P50,000.00. Believing that Hu could send him abroad, Orillano faithfully complied with these requirements including the placement fee, the payment of which was made to Genoves at Brighturn's office. Despite such payment, however, Orillano was not able to leave the country.^[12]

Garcia suffered the same fate as her co-applicants. In April 2002, Garcia applied as Electronic Operator at Brighturn wherein she was entertained by Hu who informed her that Brighturn's license was suspended. Garcia was then referred by Hu to Best One International (Best One), another recruitment agency likewise located in Malate, Manila. While Garcia was told by Hu that the processing of her documents would be done at Best One, the placement fee, however, should be paid at Brighturn. Accordingly, the amount of P60,000.00 was paid by Garcia to Hu and Genoves as placement fee upon Hu's instruction. Almost predictably, the promise of an employment abroad never came to pass.^[13]

When Hu was not able to refund the amounts paid as placement fees upon demand, private complainants went to NBI to file a complaint for illegal recruitment against Hu and Genoves.

For her defense, Hu claimed that she was the President of Brighturn, a duly authorized land-based recruitment agency. Brighturn had foreign principals in Taiwan who were looking for skilled individuals willing to work in a foreign country. Hu alleged that Brighturn had an established recruitment procedure wherein applicants were only required to pay the corresponding placement fees after the POEA had already approved their employment contracts. According to Hu, announcements were posted all over Brighturn's premises warning job applicants to pay placement fees only to the cashier. After the expiration of its license issued by the POEA on 18 December 1999, Brighturn failed to pursue its application for renewal due its inability to post the required cash bond. Brighturn was thus constrained to refer all pending applications to Best One. ^[14]

Hu admitted knowing the private complainants because these individuals went to her office demanding the return of their placement fees by showing their official receipts. Hu averred that when she examined such receipts, she found that private complainants paid their placement fees to Riverland and not to Brighturn as shown in the heading of the said receipts which bore the name and address of Riverland and its proprietress, Genoves. Hu denied knowing Genoves.^[15]

On 4 January 2005, the trial court rendered a Decision^[16] finding Hu guilty beyond reasonable doubt of the crime of illegal recruitment in large scale, the dispositive portion of which reads:

WHEREFORE, the Court finds the accused Nenita Hu guilty beyond reasonable doubt of the crime of illegal recruitment in large scale under

Section 6 and 7(b) of Republic Act No. 8042, and, accordingly, sentences the accused to suffer the penalty of life imprisonment, pay the fine of P500,000.00 and to indemnify private complainants Paul Abril in the amount of P44,000.00, Joel Panguelo in the amount of P50,000.00 and Evangeline Garcia in the amount of P50,000.00.

The Court of Appeals, in its Decision^[17] dated 9 October 2007, confirmed the presence of all the elements of illegal recruitment in large scale, and thereby affirmed the conviction of Hu with the modification that the amount of actual damages awarded to Garcia in the amount of P50,000.00 be deleted.

Hence, this Petition raising the sole issue of:

WHETHER OR NOT THE LOWER COURT ERRED IN FINDING HU GUILTY BEYOND REASONABLE DOUBT OF ILLEGAL RECRUITMENT IN LARGE SCALE.

Hu was charged with and convicted by the trial court of the crime of Illegal Recruitment in Large Scale, which conviction was affirmed by the Court of Appeals. The appellate court found that Hu made enticing, albeit empty promises, which moved private complainants to part with their money and pay the placement fee.

For its part, the Solicitor General joined the lower courts in finding that Hu was indeed guilty of Illegal Recruitment in Large Scale. According to the Solicitor General, all the elements of illegal recruitment in large scale had been established beyond reasonable doubt.^[18]

We cannot sustain the conviction for illegal recruitment in large scale.

Illegal recruitment is committed when two elements concur, namely: (1) the offender has no valid license or authority required by law to enable him to lawfully engage in the recruitment and placement of workers; and (2) he undertakes any activity within the meaning of "recruitment and placement" defined under Article 13(b) of the Labor Code.^[19] Recruitment and placement is "any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers; and includes referrals, contact 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."^[20]

The crime becomes Illegal Recruitment in Large Scale when the foregoing two elements concur, with the addition of a third element - the recruiter committed the same against three or more persons, individually or as group.^[21]

A conviction for large scale illegal recruitment must be based on a finding in each case of illegal recruitment of three or more persons whether individually or as a group. While it is true that the law does not require that at least three victims testify at the trial, nevertheless, it is necessary that there is sufficient evidence proving that the offense was committed against three or more persons.^[22]

In the appreciation of evidence in criminal cases, it is a basic tenet that the

prosecution has the burden of proof in establishing the guilt of the accused for the offense with which he is charged. *Ei incumbit probatio qui dicit non qui negat*; i.e., "he who asserts, not he who denies, must prove." The conviction of appellant must rest not on the weakness of his defense, but on the strength of the prosecution's evidence.^[23]

In the case at bar, the prosecution failed to adduce sufficient evidence to prove that illegal recruitment was committed against three or more persons. What we have uncovered upon careful scrutiny of the records was the fact that illegal recruitment was committed against only one person; that is, against Garcia alone. **Illegal recruitment cannot successfully attach to the allegations of Panguelo, Abril and Orillano, since they testified that they accomplished their pre-employment requirements through Brightturn from June 2001 up to October of the same year,^[24] a period wherein Brightturn's license to engage in recruitment and placement was still in full force and effect.** ^[25]

While there were six private complainants in this case, four of whom were presented during the trial, the prosecution, nonetheless, failed to establish that Hu engaged in illegal recruitment acts against at least three of these complainants. In offenses in which the number of victims is essential, such as in the present petition, failure of the prosecution to prove by convincing evidence that the offense is committed against the minimum number of persons required by law is fatal to its cause of action. Underscoring the significance of the number of victims was the disquisition of Justice Florenz Regalado in *People v. Ortiz-Miyake*^[26]:

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)^[27] 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)^[28] of the same Code. (Emphasis supplied.)

Regrettably, we cannot affirm the conviction of Hu for the offense of illegal recruitment in large scale. While we strongly condemn the pervasive proliferation of illegal job recruiters and syndicates preying on innocent people anxious to obtain employment abroad, nevertheless, we find the pieces of evidence insufficient to prove the guilt of Hu beyond reasonable doubt. It is unfortunate that the prosecution evidence did not pass the test of reasonable doubt, since the testimonies of its witnesses unveil a contradicting inference -- that the recruitment of Panguelo, Abril and Orillano was undertaken by Hu with the required authority from the POEA.

Failure of the prosecution to prove the guilt of Hu beyond reasonable doubt does not absolve her of her civil obligation to return the money she collected from private complaints Panguelo, Abril and Orillano, plus legal interest in accordance with our ruling in *Domagsang v. Court of Appeals*.^[29] There, the prosecution failed to sufficiently establish a case to warrant a conviction, but clearly proved a just debt owed to the private complainant. Thus, the accused was ordered to pay the face value of the check with 12% legal interest per annum, reckoned from the filing of