

EN BANC

[G.R. No. 173473, December 17, 2008]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. BETH TEMPORADA,
APPELLANT.**

DECISION

YNARES-SANTIAGO, J.:

Before us for review is the February 24, 2006 Decision^[1] of the Court of Appeals (CA), affirming with modification the May 14, 2004 Decision^[2] of the Regional Trial Court (RTC) of Manila, Branch 33, convicting accused-appellant Beth Temporada of the crime of large scale illegal recruitment, or violation of Article 38 of the Labor Code, as amended, and five (5) counts of *estafa* under Article 315, par. (2)(a) of the Revised Penal Code (RPC).

The antecedents, as found by the appellate court, are as follows:

From September 2001 to January 2002, accused Rosemarie "Baby" Robles, Bernadette Miranda, Nenita Catacotan and Jojo Resco and appellant Beth Temporada, all employees of the Alternative Travel and Tours Corporation (ATTC), recruited and promised overseas employment, for a fee, to complainants Rogelio Legaspi, Jr. as technician in Singapore, and Soledad Atle, Luz Minkay, Evelyn Estacio and Dennis Dimaano as factory workers in Hongkong. The accused and appellant were then holding office at Dela Rosa Street, Makati City but eventually transferred business to Discovery Plaza, Ermita, Manila. After complainants had submitted all the requirements consisting of their respective application forms, passports, NBI clearances and medical certificates, the accused and appellant, on different dates, collected and received from them placement fees in various amounts, viz: a) from Rogelio Legaspi, Jr. – 57,600.00; b) from Dennis Dimaano – P66,520.00; c) from Evelyn Estacio – P88,520.00; d) from Soledad Atle – P69,520.00 and e) from Luz Minkay – P69,520.00. As none of them was able to leave nor recover the amounts they had paid, complainant lodged separate criminal complaints against accused and appellant before the City Prosecutor of Manila. On November 29, 2002, Assistant City Prosecutor Restituto Mangalindan, Jr. filed six (6) Informations against the accused and appellant, one for Illegal Recruitment in Large Scale under Article 38 (a) of the Labor Code as amended, and the rest for five (5) counts of *estafa* under Article 315 paragraph 2 (a) of the Revised Penal Code.

The Information for large scale illegal recruitment reads:

Criminal Case No. 02-208371:

"The undersigned accuses ROSEMARIE "BABY" ROBLES, BERNADETTE M. MIRANDA, BETH TEMPORADA, NENITA CATACOTAN and JOJO RESCO x x x.

That in or about and during the period comprised between the months of September 2001 and January 2002, inclusive, in the City of Manila, Philippines, the said accused, representing themselves to have the power and capacity to contract, enlist and transport Filipino workers for employment abroad, did then and there willfully, unlawfully for a fee, recruit and promise employment to REGELIO A. LEGASPI, JR., DENNIS T. DIMAANO, EVELEYN V. ESTACIO, SOLEDAD B. ATTE and LUZ MINKAY without first having secured the required license from the Department of Labor and Employment as required by law, and charge or accept directly or indirectly from said complainant[s] the amount of PH57,600.00, PH66,520.00, PH88,520.00, PH69,520.00, PH69,520.00, respectively, as placement fees in consideration for their overseas employment, which amounts are in excess of or greater than that specified in the scheduled of allowable fees prescribed of the POEA and without reasons and without fault of the said complainants, failed to actually deploy them and failed to reimburse them the expenses they incurred in connection with the documentation and processing of their papers for purposes of their deployment.

Contrary to law."

Except for the name of private complainant and the amount involved, the five (5) Informations for *estafa* contain substantially identical averments as follows:

Criminal Case No. 02-208372:

"The undersigned accuses ROSEMARIE "BABY" ROBLES, BERNADETTE M. MIRANDA, BETH TEMPORADA, NENITA CATACOTAN and JOJO RESCO x x x.

That in or about and during the period comprised between November 23, 2001 and January 12, 2002, inclusive, in the City of Manila, Philippines, the said accused, conspiring and confederating together and helping one another, did then and there willfully, unlawfully and feloniously defraud ROGELIO A. LEGASPI, JR., in the following manner, to wit: the said accused, by means of false manifestations and fraudulent representations which they made to said ROGELIO A. LEGASPI, JR., prior to and even simultaneous with the commission of the fraud, to the effect that they have the power and capacity to recruit and employ ROGELIO A. LEGASPI, JR., as technician in Singapore and could facilitate the processing of the pertinent papers if given the necessary amount to meet the requirements thereof, induced and

succeeded in inducing said ROGELIO A. LEGASPI, JR., to give and deliver, as in fact he gave and delivered to said accused the amount of P57,600.00 on the strength of said manifestations and representations said accused well knowing that the same were false and fraudulent and were made solely for the purpose of obtaining, as in fact they did obtain the amount of P57,600.00, which amount, once in their possession, with intend to defraud, they willfully, unlawfully and feloniously misappropriated, misapplied and converted the same to their own personal use and benefit, to the damage and prejudice of said ROGELIO A. LEGASPI, JR. in the aforesaid amount of P57,000.00 Philippine Currency.

Contrary to law."

The other four (4) Informations for *estafa* involve the following complainants and amounts:

- | | |
|-------------------------|---------------------------|
| 1. DENNIS T.
DIMAANO | P66,520.00 |
| 2. EVELYN V.
ESTACIO | P88,520.00 |
| 3. SOLEDAD B. ATLE | P69,520.00 |
| 4. LUZ T. MINKAY | |
| | P69,520.00 ^[3] |

Only appellant was apprehended and brought to trial, the other accused remained at large. Upon arraignment, appellant pleaded not guilty and trial on the merits ensued. After joint trial, on May 14, 2004, the RTC rendered judgment convicting appellant of all the charges:

WHEREFORE, the prosecution having established the GUILT of accused Beth Temporada BEYOND REASONABLE DOUBT, judgment is hereby rendered CONVICTING the said accused, as principal of the offenses charged and she is sentenced to suffer the penalty of LIFE IMPRISONMENT and a fine of Five Hundred Thousand Pesos (P500,000.00) for illegal recruitment; and the indeterminate penalty of four (4) years and two (2) months of prision correctional as minimum, to nine (9) years and one (1) day of prision mayor, as maximum for the *estafa* committed against complainant Rogelio A. Legaspi, Jr.; the indeterminate penalty of four (4) years and two (2) months of prision correctional as minimum to ten (10) years and one day of prision mayor as maximum each for the *estafas* committed against complainants, Dennis Dimaano, Soledad B. Atte and Luz T. Minkay; and the indeterminate penalty of four (4) years and two (2) months of prision correctional as minimum, to eleven (11) years and one (1) day of prision mayor as maximum for the *estafa* committed against Evelyn Estacio.

The accused is also ordered to pay jointly and severally the complainants actual damages as follows:

- | | |
|------------------------------|------------|
| 1. Rogelio A. Legaspi
Jr. | P57,600.00 |
|------------------------------|------------|

2. Dennis T. Dimaano	66,520.00
3. Evelyn V. Estacio	88,520.00
4. Soledad B. Atte	66,520.00
5. Luz T. Minkay	69,520.00

SO ORDERED.^[4]

In accordance with the Court's ruling in *People v. Mateo*,^[5] this case was referred to the CA for intermediate review. On February 24, 2006, the CA affirmed with modification the Decision of the RTC:

WHEREFORE, with MODIFICATION to the effect that in Criminal Cases Nos. 02-208373, 02-208375, & 02-208376, appellant is sentenced to suffer the indeterminate penalty of six (6) years of *prision correccional maximum*, as minimum, to ten (10) years and one (1) day of *prision mayor maximum*, as maximum; and in Criminal Case No. 02-208374, she is sentenced to suffer the indeterminate penalty of eight (8) years and one (1) day of *prision mayor medium*, as minimum, to twelve (12) years and one (1) day of *reclusion temporal minimum*, as maximum, the appealed decision is AFFIRMED in all other respects.^[6]

Before this Court, appellant ascribes the lone error that the trial court gravely erred in finding her guilty of illegal recruitment and five (5) counts of *estafa* despite the insufficiency of the evidence for the prosecution.

We affirm the Decision of the CA, except as to the indeterminate penalties imposed for the five (5) counts of *estafa*.

Article 13(b) of the Labor Code defines recruitment and placement thusly:

ART. 13. *Definitions.* – x x x

(b) "*Recruitment and placement*" refers to 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: 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.

To constitute illegal recruitment in large scale, three (3) elements must concur: (a) the offender has no valid license or authority required by law to enable him to lawfully engage in recruitment and 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 said Code (now Section 6 of R.A. No. 8042); and, (c) the offender committed the same against three (3) or more persons, individually or as a group.^[7]

In the case at bar, the foregoing elements are present. Appellant, in conspiracy with her co-accused, misrepresented to have the power, influence, authority and business to obtain overseas employment upon payment of a placement fee which was duly collected from complainants Rogelio Legaspi, Dennis Dimaano, Evelyn

Estacio, Soledad Atle and Luz Minkay. Further, the certification^[8] issued by the Philippine Overseas Employment Administration (POEA) and the testimony of Ann Abastra Abas, a representative of said government agency, established that appellant and her co-accused did not possess any authority or license to recruit workers for overseas employment. And, since there were five (5) victims, the trial court correctly found appellant liable for illegal recruitment in large scale.

Appellant insists that she was merely an employee of ATTC and was just "echoing the requirement of her employer." She further argues that the prosecution failed to prove that she was aware of the latter's illegal activities and that she actively participated therein. In essence, she controverts the factual findings of the lower courts.

The contention is untenable.

An employee of a company or corporation engaged in illegal recruitment may be held liable as principal, together with his employer, if it is shown that he actively and consciously participated in illegal recruitment.^[9] Appellant actively took part in the illegal recruitment of private complainants. Rogelio Legaspi testified that after introducing herself as the General Manager of ATTC, appellant persuaded him to apply as a technician in Singapore and assured him that there was a job market therefor. In addition to the placement fee of P35,000.00 which he paid to accused Bernadette Miranda, he also handed the amount of P10,000.00 to appellant who, in turn, issued him a receipt for the total amount of P45,000.00. Upon the other hand, Soledad Atle and Luz Minkay, who applied as factory workers in Hongkong through co-accused, Emily Salagonos, declared that it was appellant who briefed them on the requirements for the processing of their application, and assured them and Dennis Dimaano of immediate deployment for jobs abroad. For her part, Evelyn Estacio testified that aside from the placement fee of P40,000.00 that she paid to co-accused "Baby" Robles in connection with her purported overseas employment, she also gave appellant P10,000.00 for which she was issued a receipt for the amount of P5,000.00.

The totality of the evidence, thus, established that appellant acted as an indispensable participant and effective collaborator of her co-accused in the illegal recruitment of complainants. As aptly found by the CA:

Without doubt, all the acts of appellant, consisting of introducing herself to complainants as general manager of ATTC, interviewing and entertaining them, briefing them on the requirements for deployment and assuring them that they could leave immediately if they paid the required amounts, unerringly show unity of purpose with those of her co-accused in their scheme to defraud private complainants through false promises of jobs abroad. There being conspiracy, appellant shall be equally liable for the acts of her co-accused even if she herself did not personally reap the fruits of their execution. We quote with approval the trial court's findings on the matter:

"xxx It is clear that said accused conspired with her co-accused Rosemarie "Baby" Robles, Bernadette M. Miranda, Nenita Catacotan, and Jojo Resco in convincing complainants xxx to apply for overseas jobs and giving complainants