

## SECOND DIVISION

[ G.R. No. 132029, July 30, 2004 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. MARIO ALZONA,  
APPELLANT.**

### DECISION

**AUSTRIA-MARTINEZ, J.:**

Before us is the Decision<sup>[1]</sup> of the Court of Appeals dated July 28, 1997 rendered in CA-G.R. CR No. 17228, the dispositive portion of which reads:

WHEREFORE, the joint decision of the trial court finding appellant MARIO ALZONA guilty beyond reasonable doubt of illegal recruitment in large scale and sentencing him to suffer the penalty of life imprisonment and to pay a fine of P100,000.00 (Criminal Case No. 92-113702) and estafa (Criminal Case Nos. 92-113706 to 92-113709) is AFFIRMED with modification in the sense that the penalty which should be imposed upon herein appellant in Criminal Case No. 92-113709 is the indeterminate penalty of 4 years and 2 months of prision correccional, as minimum, to 9 years of prision mayor, as maximum.

Pursuant to Section 13(2), Rule 124 of the 1985 Rules of Criminal Procedure, as amended, let this case be certified and the entire records thereof be elevated to the Supreme Court for review.

Costs against the appellant.

SO ORDERED.

On December 4, 1996, an Information for Large Scale Illegal Recruitment against appellant Mario Alzona, docketed as Criminal Case No. 92-113702 and seven Informations for Estafa against appellant and his wife, Miranda Alzona, docketed as Criminal Cases Nos. 92-113703 to 92-113709, were filed before Branch 1 of the Regional Trial Court of Manila (RTC for brevity). All eight cases were consolidated and jointly tried by the RTC. However, due to the failure of private complainants to testify and present their evidence, Criminal Cases Nos. 92-113703 to 92-113705 were dismissed but only as against appellant Mario Alzona.

In Criminal Case No. 92-113702, the Information charges appellant as follows:

That in (sic) or about and during the period comprised between August 2, 1991 and March 30, 1992, inclusive, in the City of Manila, Philippines, the said accused, representing himself 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 the following persons, namely: LYDIA C. RAMOS,

MELINDA P. GONZALES, MARCELA R. MERCADO, FERNANDO P. DELA CRUZ, LEONARDO C. MERCURIO, MARIO REGINO P. DECENA and JAMES M. MAZON, without first having secured the required license or authority from the Department of Labor.

CONTRARY TO LAW.

In Criminal Cases Nos. 92-113706 to 92-113709, the Informations allege that appellant, conspiring and confederating with his wife, Miranda Alzona, defrauded private complainants Fernando Dela Cruz, James Mazon, Leonardo Mercurio and Mario Regino Decena, by means of false manifestations and fraudulent representation that they had the power and capacity to recruit and employ the private complainants and could facilitate the processing of the pertinent papers if given the necessary amount to meet the requirements thereof, and by means of other similar deceits, induced and succeeded in inducing said private complainants to give and deliver, as in fact private complainants delivered sums of money to appellant and his wife, the latter well knowing that their representations were false and fraudulent and were made solely to obtain sums of money from private complainants, which money, once in their possession, they misappropriated, misapplied and converted to their own personal use and benefit, to the damage and prejudice of the private complainants.

Upon arraignment, appellant pleaded not guilty to the foregoing charges. Trial ensued. Accused Miranda Alzona remains at-large.

The facts of the case, as established by the prosecution, are as follows.

Private complainant Mario Regino Decena came to know of appellant because a friend of his, Goring Rodil, was able to work abroad through the facilitation of appellant. Decena met appellant at the latter's house at 1532 Hizon St., Sta. Cruz, Manila, where appellant asked him to prepare ₱38,000.00, inclusive of the ₱1,000.00 for the passport, so he can leave within one month. Said amount was supposed to pay for his fare going to Korea where appellant said he would be employed as a factory worker with a monthly salary of \$450.00. Both appellant and Miranda convinced him to apply for work abroad. He then paid the ₱1,000.00 for the passport and on February 10, 1992, he paid another ₱33,000.00, received by appellant himself. The latter refused to give him a receipt for the amounts he paid. Despite having paid the total of ₱34,000.00, appellant failed to send him to work in Korea and also failed to return his money.<sup>[2]</sup>

Another private complainant, Leonardo Mercurio, also went to appellant's house in Sta. Cruz, Manila and applied to appellant and his wife for work abroad. Mercurio and his brother-in-law, Fernando Dela Cruz, were accompanied by Decena who had also applied to the spouses Alzona for overseas work. Mercurio talked mainly to appellant's wife, Miranda, in the presence of appellant. She asked him to pay ₱1,000.00 for the passport. Appellant was seated around the same table where he and Miranda were talking. Appellant and Miranda asked Mercurio and his brother-in-law to pay ₱20,000.00 each on March 30, 1992. Thus, on March 30, 1992, Mercurio delivered to appellant the amount of ₱20,000.00 and despite his request for a receipt, appellant refused to issue one. The total fees being asked for by appellant was ₱38,000.00. After receiving the ₱20,000.00, appellant reminded Mercurio to pay the balance so he can depart within a week for Korea where appellant promised

him employment as a factory worker with a monthly salary of at least \$450.00. Appellant instructed Mercurio to buy an attaché case and a coat and tie. Mercurio was not able to depart by the first week of April as promised by appellant but he continued to follow-up his application. Sometime in July of 1992, Mercurio became impatient and demanded from appellant for the return of his money. On August 21, 1992, Mercurio filed a complaint with the police against appellant.<sup>[3]</sup>

Private complainant Fernando Dela Cruz corroborated the testimony of Mercurio on all material points. On some of the occasions that he and Mercurio followed-up their applications, Dela Cruz talked to appellant himself who would always tell him to prepare because they will soon be leaving for Korea. The last time they went to appellant's house, the Barangay Captain of the place informed them that appellant had already been apprehended.<sup>[4]</sup>

Private complainant James Mazon had a similar experience with appellant and Miranda. After having heard that appellant and Miranda were accepting applicants for employment abroad, Mazon went to appellant's residence during the first week of January, 1992. Appellant and Miranda promised that he would be deployed to Korea where he will be employed as a factory worker. He was told to pay the placement fee of ₱38,000.00 inclusive of charges for the passport. Appellant told Mazon that he was in-charge of booking and procuring tickets, while Miranda was the one who made arrangements with regard to the application for a job abroad. On January 10, 1992, he gave ₱15,000.00 to appellant who did not issue a receipt. Upon receiving such partial payment, appellant promised him that he would be deployed within one to two months. He was never deployed to Korea and he heard from the other private complainants who were also from Mulanay, Quezon, that appellant was already in jail.<sup>[5]</sup>

Risa Balverde, a Licensure Officer III of the Philippine Overseas Employment Administration (POEA) testified that appellant was neither licensed nor authorized by the POEA to recruit workers for overseas employment.<sup>[6]</sup>

For his defense, appellant merely denied that he ever met, talked to or received money from the aforementioned four private complainants; nor had he been involved in illegal recruitment. He presented the alibi that he, being a jeepney driver, was out of their house everyday from 7 o'clock in the morning to around 9 o'clock in the evening, so private complainants could not have talked to him at his house at 1532 Hizon St., Sta. Cruz, Manila. He, however, admitted that in 1989, he found out that his wife was engaged in recruiting workers for abroad. In fact, his wife had been going back and forth to Korea around six times a year since 1990, to accompany people. He stopped being a jeepney driver on July 15, 1992, because so many people were going to their house.<sup>[7]</sup>

Appellant's daughter, Marites Alzona, corroborated her father's testimony that he is a jeepney driver and is out of their house everyday from 6 o'clock in the morning to 10 o'clock in the evening, and therefore, private complainants could not have met her father. She admitted that she had seen private complainants talking to her mother at their house beginning August 1991 but she was unaware as to what their purpose was for coming to their house. She would see them at their house around four times a month, but the last time she saw them was in July 1992. Her mother left for Korea on July 15, 1992 and thereafter, every time private complainants

would come looking for her mother, she would be the one to talk to them. When she told them that her mother had left for Korea, private complainants became angry. On August 5, 1992, she and her father were arrested at their house.<sup>[8]</sup>

Appellant's sister, Esther Panday, testified that she owns the jeepney being driven by appellant everyday, twelve hours a day. Such being the case, she believed appellant could not have engaged in any other sideline such as recruiting workers for abroad.<sup>[9]</sup>

After both parties had rested their case, the trial court rendered judgment,<sup>[10]</sup> the dispositive portion of which read as follows:

WHEREFORE, this court finds the accused Mario Alzona GUILTY beyond reasonable doubt of Illegal Recruitment in large scale in Criminal Case No. 92-113702 and of four (4) separate crimes of estafa in Criminal Cases Nos. 92-113706, 92-113707, 92-113708 and 92-113709 and, as a consequence thereof, sentences him as follows:

1. In Criminal Case No. 92-113702, to suffer the penalty of life imprisonment and to pay a fine of ₱100,000.00; and
2. In Criminal Cases Nos. 92-113706, 92-113707, 92-113708 and 92-113709, to suffer in each case the indeterminate penalty of one (1) year and eight (8) months of prision correccional minimum as minimum to five (5) months and eleven (11) days of prision correccional maximum as maximum.

Further, the accused shall indemnify the private complainants Fernando dela Cruz, James Mazon, Leonardo Mercurio and Mario Regino P. Decena the respective sums of ₱21,000.00, ₱15,000.00, ₱21,000.00, and ₱34,000.00, with interest thereon at the legal rate from judicial demand until fully paid.

Costs against the accused in all the above-mentioned cases.

Anent Criminal Cases No. 92-113703, 92-113704 and 92-113705, the same are hereby ordered dismissed as against accused Mario Alzona for lack of evidence.

No costs.

SO ORDERED.<sup>[11]</sup>

Appellant appealed the criminal cases to the Court of Appeals with the following Assignment of Errors:

## **I**

THE TRIAL COURT ERRED IN FINDING THAT ACCUSED-APPELLANT ILLEGALLY RECRUITED THE COMPLAINANTS.

## **II**