

SECOND DIVISION

[G.R. No. 128583, November 22, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
JOSEPHINE FAJARDO, ACCUSED-APPELLANT.**

D E C I S I O N

BUENA, J.:

Appellant Josephine Fajardo, together with her sister Virgie Lanchita, was charged with illegal recruitment before the Regional Trial Court of Pasay City, Branch 114 based on an Information which reads:

"That on or about and sometime during the period from March 1993 to July 1993 in Pasay, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused JOSEPHINE FAJARDO and VIRGIE LANCHITA, conspiring and confederating together and mutually helping one another, by falsely representing themselves to have the capacity to contract, enlist and employ and recruit workers for employment abroad, did then and there wilfully, unlawfully and feloniously for fee, recruit RANDY BALSOMO, LAMBERTO BALASA, RUBEN PORRAS, EDUARDO AMISCUA, DOMINGO LEQUILLO, BENEDICTO DARIA and ARTHUR APOSAGA, without first securing the required license or authority from the Philippine Overseas Employment Administration."^[1]

Appellant was likewise charged with seven (7) counts of estafa for inducing Randy Balsomo, Lamberto Balasa, Ruben Porras, Eduardo Amiscua, Domingo Lequillo, Benedicto Daria and Arthur Aposaga, herein private complainants, to pay sums of money of varying amount to her, on account of her fraudulent representations that she can facilitate their employment abroad. Except for the name of the offended party, date and amount, the seven information for *estafa* were couched in similar language in this wise -

"That on or about and sometime during the period from March 1993 to July 1993, in Pasay, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, JOSEPHINE FAJARDO and VIRGIE LANCHITA, conspiring and confederating together and mutually helping one another, did then and there wilfully, unlawfully and feloniously defraud ARTHUR APOSAGA y ARIOLA, in the following manner, to wit: that said accused, pretending to have authority, power and capacity to employ complainant abroad, facilitate his travel documents and send abroad as soon thereafter as he gives the accused the amount of P56,000.00, said accused, did by means of such and other deceits, induced and succeeded in inducing said complainant into delivering the

said sum of P56,000.00, the said accused well knowing that the aforesaid representations are false and fraudulent as they were made to obtain thru fraud the above-stated sum of money from the complainant who, without knowledge of such falsity, did give and deliver unto the accused the said money, and once in possession of the same the said accused with intent to gain, did then and there wilfully, unlawfully and feloniously misapply, misappropriate and convert to her own personal use and benefit and advantage the aforestated amount to the damage and prejudice of the said complainant in the said amount of P56,000.00."^[2]

Upon arraignment, appellant Fajardo pleaded not guilty to all the charges. Her sister Virgie Lanchita remains at large. Thereafter, trial proceeded with respect to appellant Fajardo.

The prosecution's case as summarized by the Solicitor General reveal the following facts:^[3]

"Between February and March 1993, private complainants Lamberto Balasa, Arthur Aposaga, Ruben Porras, Benedicto Daria and Eduardo Amiscua separately went on different occasions to L.A. Worldwide Manpower and Management Services, a recruitment agency at 2814 Violeta Court, F. B. Harrison, Pasay City, to apply for work abroad. They came upon appellant Josephine Fajardo and her sister Virgie Lanchita who recruited workers for Japan. The sisters told them the requirements for applying for work abroad, among them, the P5,000.00 processing fee and P60,000.00 placement fee.

"Thus, on different dates, all five men paid the P5,000.00 processing fee. Thereafter, each of them paid varying amounts to complete the P60,000.00 placement fee, either directly to appellant or to Virgie Lanchita in the presence of appellant. Balasa paid P20,000.00 on March 14, 1993 and P15,000.00 on March 29, 1993. Aposaga paid P22,000.00 on March 14; P14,000.00 on March 29; NS P15,000.00 on May 10, 1993. Porras paid P25,000.00 on March 15 and P15,000.00 on April 5, 1993. Daria paid P25,000.00 on March 2, 1993. Amiscua paid P25,000.00 on the first week of March 1993 and P30,000.00 on the third week.

"Appellant and her sister told the men to wait for their papers to be processed so that they could leave for abroad. But months passed and the men were never deployed. Each man then demanded from the sisters the refund of the money paid but they never did.

"A verification of the record with the Licensing Division of the Philippine Overseas Employment Administration (POEA) revealed that neither Josephine Fajardo nor Virgie Lanchita was ever licensed to recruit workers. Their names were not even included in the list of personnel submitted to the POEA by L.A. Worldwide Manpower and Management Services, a duly authorized agency."

Appellant on the other hand professed her innocence, claiming that in dealing with the private complainants, she was merely acting under the authority of her employer, Mr. Ishwar Pamani, the Overseas Marketing Director of L.A. Worldwide Manpower and Manager Services - a duly licensed overseas recruitment agency - and owner of the Satellite Travel Agency, where she was employed. She allegedly received the processing and placement fees from private complainants in behalf of Mr. Pamani.

On January 22, 1997, the trial court found appellant guilty beyond reasonable doubt of the crime charged and sentenced her as follows:

"WHEREFORE, the Court finds accused JOSEPHINE FAJARDO y LANCHITA GUILTY beyond reasonable doubt as principal, in Criminal Case No. 94-5202 for Illegal Recruitment, and Estafa in five (5) counts under Criminal Cases Nos. 94-5203, 94-5206, 94-5207 and 94-5209 and sentences her as follows:

` For Crim. Case No. 94-5202:

To suffer the penalty of Life Imprisonment and to pay a fine of P100,000.00;

` For Crim. Case No. 94-5203:

To suffer the penalty of imprisonment of Fifteen (15) years of prison mayor and to indemnify the complainant, Arthur Aposaga the amount of P56,000.00 pesos.

` For Crim. Case No. 94-5204:

To suffer the penalty of Imprisonment of Twelve (12) years of prison mayor and to indemnify the complainant Benedicto Daria the amount of P30,000.00 pesos.

` For Crim. Case No. 94-5206:

To suffer the penalty of imprisonment of Fifteen (15) years of prison mayor and to indemnify the complainant Eduardo Amiscua the amount of P60,000.00 pesos.

` For Crim. Case No. 94-5207:

To suffer the penalty of imprisonment of Fourteen (14) years of prison mayor and to indemnify the complainant Ruben Porras the amount of P45,000.00 pesos.

` For Crim. Case No. 94-5209:

To suffer the penalty of imprisonment of Fourteen (14) years of prison mayor and to indemnify the complainant Lamberto Balasa the amount of

P45,000.00 pesos (should be P40,000.00),

and to pay Attorney's fees in the amount of Seventy Five Thousand (P75,000.00) pesos.

"She is ACQUITTED in Criminal Cases Nos. 94-5205 and 94-5208 for lack of evidence.

"SO ORDERED."^[4]

Appellant now comes to this Court, pleading us to set aside her conviction and arguing that the trial court erred:

- I.IN CONVICTING ACCUSED-APPELLANT FOR ILLEGAL RECRUITMENT WHEN FROM THE EVIDENCE, SHE WAS MERELY PERFORMING HER DUTIES AS AN EMPLOYEE OF ISHWAR PAMANI WHO WAS THEN THE AUTHORIZED OVERSEAS MARKETING DIRECTOR OF L.A. WORLDWIDE MANPOWER AND MANAGEMENT SERVICES, A DULY LICENSED AND AUTHORIZED ENTITY TO RECRUIT.
- II. ...IN FAILING TO CONSIDER THAT APPELLANT ACTED IN GOOD FAITH IN DOING AND PERFORMING ACTS UPON INSTRUCTIONS OF HER EMPLOYER WITHOUT KNOWING THAT SHE HAS TO BE REGISTERED WITH THE POEA AS EMPLOYEE OF THE RECRUITMENT AGENCY BEFORE SHE COULD WORK FOR HER EMPLOYER, MR. ISHWAR PAMANI.
- III. ...IN CONVICTING ACCUSED-APPELLANT IN THE FIVE (5) CASES OF ESTAFA WHEN FROM THE EVIDENCE, THE AMOUNT PAID BY THE COMPLAINING WITNESSES WERE RECEIVED BY ISHWAR PAMANI AS OVERSEAS MARKETING DIRECTOR OF L.A. WORLDWIDE MANPOWER AND MANAGEMENT SERVICES, A DULY LICENSED RECRUITMENT AGENCY.
- IV. ...IN FAILING TO APPLY TO ACCUSED-APPELLANT THE PRESUMPTION OF INNOCENCE GUARANTEED BY THE CONSTITUTION.

We affirm the conviction.

The crime of illegal recruitment in large scale is committed when the following elements concur, namely: (1) that the accused is engaged in acts of recruitment and placement of workers as defined under Article 13(b), or in any prohibited activities under Article 34 (Prohibited Practices) of the Labor Code; (2) that the accused had not complied with the guidelines issued by the Secretary of Labor and Employment, particularly with respect to the requirement to secure a license or an authority to

recruit and deploy workers, either locally or overseas; and (3) that the accused committed the unlawful acts against three or more persons, individually or as a group.^[5]

The foregoing elements were duly established in the case at bar. Appellant committed acts of recruitment defined under Article 13(b) of the Labor Code which states that:

"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"

The testimonies of the complaining witnesses, Lamberto Balasa, Arthur Aposaga, Ruben Porras, Benedicto Daria and Eduardo Amiscua, who corroborated each other's account, showed that appellant entertained applicants for overseas employment who came to L.A. Worldwide Manpower and Management Services, promised them jobs abroad, and received placement and processing fees.

Thus, complaining witness Lamberto Balasa testified:

"Q Now, how did you come to know this Josephine Fajardo y Lanchita?

"A When we proceed to the office at L.A. Lewman's Worldwide Manpower and Management Services, sir.

"Q Where is this office located?

"A At Violeta Court, F.B. Harrison, St., Pasay City, sir.

"x x x x x x x x

"COURT:

Wait, when did you go there?

"A Month of March 1993, sir.

"ATTY. DIAZ:

"Q Did you go there on your own?

"A With my friends, sir.

"Q What was the purpose in going to that office of Josephine Fajardo?

"A Because, we were looking for a job abroad, sir.

"x x x x x x x x

"COURT:

What happened when you went to Lewman's Worldwide Manpower Services on March 1993?

"A They said, they are recruiting men for job abroad, sir.

"Q Who are these 'they', that you're referring to?

"A Virgie Lanchita and Josephine Fajardo, sir.

"Q What particular country did these two (2), Josephine Fajardo and Virgie Lanchita did they offer you?

"A Japan, sir.

"x x x x x x x x