

SECOND DIVISION

[G.R. Nos. 108440-42, March 11, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
VICENTE MERCADO Y MERCADO ALIAS VICENTE TAN, ACCUSED-
APPELLANT.**

D E C I S I O N

MENDOZA, J.:

This is an appeal from the decision^[1] of the Regional Trial Court of Manila, Branch XLI, finding accused-appellant Vicente Mercado y Mercado alias Vicente Tan guilty of (1) illegal recruitment committed in large scale and sentencing him to suffer life imprisonment, pay a fine of P100,000.00, and indemnify private complainants in actual damages amounting to a total of P190,000.00; and (2) estafa for which he was sentenced to suffer an indeterminate prison term ranging from six (6) years and two (2) months of *prision mayor*, as minimum, to ten (10) years of *prision mayor*, as maximum, and to indemnify private complainant Nelson Tamares in the sum of P45,000.00 by way of actual damages. Another case for estafa filed against accused-appellant was dismissed for lack of evidence.

The facts are as follows:

In Criminal Case No. 92-105275, the information for illegal recruitment in large scale alleged ^¾

That in or about the period comprised between May 1, 1991 and April 5, 1992, in the City of Manila, Philippines, the said accused, conspiring and confederating with others whose true names, real identities and present whereabouts are still unknown and helping one another representing themselves to have the capacity to contract, enlist and transport Filipino workers for employment abroad, did then and there wilfully and unlawfully, for a fee, recruit and promise employment/job placement abroad to the following persons: Antonio Peralta y Bragado, Ruth Enriquez y Bagui, Ignacio Rivera y Dionisio, Danilo Rivera y Buenaventura, Domingo Baetiong y Palamario, Nelson Tamares y Veranga, Jimmy Elep y Asis without first having secured the required license or authority from the Department of Labor and Employment.

Contrary to law.^[2]

Two other informations for estafa were also filed. In Criminal Case No. 92-105276, it was charged -

That in or about the period comprised between January 10, 1992 and March 25, 1992 in the City of Manila, Philippines, the said accused conspiring and confederating with others whose true names, identities

and present whereabouts are still unknown and helping one another then and there wilfully, unlawfully and feloniously defraud NELSON TAMARES Y VERANGA in the following manner, to wit: the said accused, by means of false manifestations and fraudulent representations which they made to said Nelson Tamares y Veranga to the effect that the power and capacity to recruit and employ him as a contract worker in Macao 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 Nelson Tamares y Veranga to give and deliver, as in fact they gave and delivered to said accused the amount of P18,680.00/ and \$1,200.00 on the strength of said manifestations and representations, said accused well knowing that the same were false and fraudulent and were made solely to obtain as in fact they did obtain the amount of P18,680.00/and \$1,200.00 which amount once in their possession, with intent to defraud, they wilfully, unlawfully and feloniously misappropriated, misapplied and converted to their own personal use and benefit, to the damage and prejudice of said Nelson Tamares y Veranga in the aforesaid amount of P18,680.00 and \$1,200.00 or its equivalent in Philippine currency.

Contrary to law.^[3]

In Criminal Case No. 92-105277, it was alleged ^¾

That in or about the period comprised between May 1, 1991 and March 25, 1992 in the City of Manila, Philippines, the said accused conspiring and confederating with others whose true names, real identities and present whereabouts are still unknown and helping one another did then and there wilfully, unlawfully and feloniously defraud JIMMY ELEP Y ASIS in the following manner, to wit: the said accused, by means of false manifestations and fraudulent representation which they made to said Jimmy Elep y Asis to the effect that they had the power and capacity to recruit and employ him as contract worker in Macao, China 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 Jimmy Elep y Asis to give and deliver, as in fact gave and delivered to said accused the amount of P61,000.00 on the strength of said manifestations and representations, said accused well knowing that the same were false and fraudulent and was made solely to obtain, as in fact they did obtain the amount of P61,000.00 which amount once in possession, with intent to defraud they wilfully, unlawfully and feloniously misappropriated, misapplied and converted to their own personal use and benefit to the damage and prejudice of said Jimmy Elep y Asis in the aforesaid amount of P61,000.00, Philippine currency.

Contrary to law.^[4]

As said indictments are founded on the same facts, the cases were tried jointly. On July 22, 1992, accused-appellant Vicente Mercado entered a plea of not guilty to each of the charges, whereupon trial commenced.

The prosecution presented Danilo Rivera as its first witness. Rivera testified that Ricky de los Santos introduced him to accused-appellant Vicente Mercado, an overseas worker recruiter. Ricky gave him an application form which he filled out and signed in accused-appellant's house in Singalong, Manila. (Ricky de los Santos is accused-appellant's cousin.) Rivera wanted to work as a factory worker in Hong Kong. Ricky gave the application to accused-appellant's wife Baby Tan, who told Rivera to be ready with his money and the necessary papers. In February 1992, Rivera paid P20,000.00 to Baby Tan, for which he was given a receipt by Baby Tan. The payment was made in accused-appellant's house. Present were accused-appellant and Toto Bellosillo, who is accused-appellant's sister-in-law. Accused-appellant assured Rivera that the latter would get a job which would give him \$500.00 a month. On the day of his departure for Hong Kong (March 4, 1992), Rivera gave to Baby Tan at the airport P30,000.00 more. Rivera testified that before leaving for Hong Kong, accused-appellant and his wife made him sign a waiver, which he was not able to read as he was asked to sign in a hurry otherwise he could not get his passport.^[5] Since he was given his passport, he did not bother to ask for a receipt. After one day in Hong Kong, Rivera and his companions were accompanied to Macao by a certain Sally. Two days later, accused-appellant and his wife Baby Tan arrived. Rivera and his companions were asked to wait, but after fifteen days of waiting, they were told by Sally that accused-appellant and his wife did not really know anybody in Macao. On March 27, 1992, Rivera returned to the Philippines.

Antonio Peralta likewise testified for the prosecution. Peralta said that he and accused-appellant's cousin, Ricky de los Santos, were frequent visitors in accused-appellant's house, which also served as a recruitment office. Accused-appellant Vicente Mercado was the manager of the business, while his wife was the treasurer. During one of Antonio's visits to accused-appellant's house in January 1992, accused-appellant Vicente Mercado told him that if he wished to apply for placement abroad, he could fill out a bio-data form and return it to him together with the sum of P40,000.00 for plane ticket and placement fee. If he was not around, Peralta could pay the amount to Quinses "Toto" Bellosillo, accused-appellant's sister-in-law. Peralta said that in March 1992 he accomplished the form, stating therein that he was applying for a job in Macao, and paid P40,000.00 to Toto Bellosillo. No receipt was issued to him. Instead, he was told that there was no need for a receipt as Peralta could see his companions had already been sent overseas. He was assured that he would be called as soon as the trip was ready. But before he could be called, Peralta received a call from Danilo Rivera and Domingo Baetiong from Macao and was told that there was no job available for any of them in that place. Peralta, therefore, lost no time in going to accused-appellant's agency and asking for the return of his money. But accused-appellant was not around. Toto Bellosillo told him that she had no money and that her sister, Baby Tan, was still abroad. In April 1992, following the return of accused-appellant, Peralta filed a complaint with the police. Accused-appellant was asked to come to the police headquarters for questioning. Peralta, together with Danilo Rivera and Ignacio Rivera, signed affidavits in which they allege that they were victims of illegal recruitment. Peralta claimed that at the police station, accused-appellant Vicente Mercado told them that he was willing to refund their money.^[6]

Nelson Tamares also testified. Nelson said that in January 1992, he was accompanied by his wife's classmate to accused-appellant Vicente Mercado to apply

for a job as factory worker in Korea. Like the other prosecution witnesses, Tamares was made to fill out an application form and assured of earning around \$500.00 a month in Korea. He said that he paid P45,000.00 to Baby Tan for which he was given a receipt indicating his payment in two installments. The first payment was for \$1,000.00 which, at the prevailing rate of exchange at the time, was equivalent to P26,320.00. Then, on February 25, 1992, he again paid P18,680.00 to Baby Tan. Present on both days were accused-appellant and Toto Bellosillo. On March 3, 1992, Tamares and seven other persons left for Hong Kong. Although he wanted to work in Korea, he was told by accused-appellant that Korea had become strict in enforcing immigration laws. Tamares and his group were met in Hong Kong by Baby Tan. The following day, accused-appellant arrived and took them to Macao where they were made to wait for two weeks. However, after two weeks, there was still no work for them. Tamares, therefore, returned to the Philippines. Upon inquiry at the Philippine Overseas Employment Agency (POEA), Tamares learned that accused-appellant, Baby Tan, and Toto Bellosillo had no license to recruit. Tamares and his companions filed a complaint at Police Station No. 5 and gave their statements. Tamares said that a lawyer of accused-appellant offered to pay him P20,000.00.^[7] On cross-examination, he said that accused-appellant's friend, Aling Amor, made him sign a waiver just as he was about to depart from the airport.^[8]

Domingo Baetiong likewise testified. He was also accompanied by Ricky de los Santos to accused-appellant's house, where he accomplished an application form given to him by accused-appellant. Baetiong was told that he could have a job as factory worker in Macao for which the monthly salary was \$500.00. Initially, he paid to accused-appellant and his wife P40,000.00, for which he was given a receipt. Later on, at the airport, Baetiong paid P10,000.00 to accused-appellant. No receipt was issued for this amount. On March 5, 1992, Baetiong and his companions were taken to Hong Kong and from there to Macao. After eleven (11) days he became impatient and returned to the Philippines as there was no job available. Baetiong proceeded to the Police Precinct and filed a complaint against accused-appellant. He said on cross-examination that he too was made to sign a waiver, which he was not able to read because he was hurried to do so at the airport.^[9]

Ignacio Rivera, Baetiong's brother-in-law, was likewise presented by the prosecution. He testified that he met accused-appellant Vicente Mercado at the latter's house in February 1992. He was assured of a job as a factory worker in Macao at a monthly salary of \$500.00. Ignacio later went back to the office and paid P40,000.00 to Quinses Bellosillo. No receipt was issued as according to Quinses Bellosillo, only Baby Tan was authorized to issue receipts and she was in Hong Kong. Ignacio testified that he was present when accused-appellant was arrested by policemen in April 1992 and that he also executed a sworn statement against accused-appellant Vicente Mercado.^[10]

Jocelyn Turla, Senior Labor Employment Officer of the POEA, was presented in court. Her testimony was dispensed with as the parties stipulated that accused-appellant Vicente Mercado did not have a license to recruit workers for jobs abroad.^[11]

Accused-appellant testified in his defense. He denied that he was engaged in the recruitment business. He said his business was buying and selling Ready-To-Wear clothes (RTW). On cross-examination, he explained that, as manager of the business, he went to Macao three times a year to import RTWs because it was

cheaper to buy them there. He claimed that he had a residence in Macao. He admitted he saw all the complainants in Macao on different dates.^[12] He further admitted he knew that his wife received P20,000.00 from Danilo Rivera and various sums from the other complainants, but he claimed he had nothing to do with his wife's activities. He further claimed that the complainants knew that they were being sent overseas simply on the chance that they might find employment.

On November 23, 1992, the trial court rendered a decision, the dispositive portion of which reads:^[13]

Wherefore, judgment is hereby rendered as follows -

a) In Criminal Case No. 92-105275, finding the accused Vicente Mercado y Mercado alias Vicente Tan guilty beyond reasonable doubt for the crime of Illegal Recruitment committed in large scale and hereby sentences the said accused to suffer the penalty of life imprisonment and to pay a fine of P100,000.00 and to indemnify the complainants (1) Danilo Rivera the sum of P50,000.00; (2) Antonio Peralta the sum of P40,000.00; (3) Domingo Baetiong the sum of P50,000.00; and (4) Ignacio Rivera the sum of P50,000.00, as and by way of actual damage.

b) In Criminal Case No. 92-105276, finding the accused Vicente Mercado y Mercado alias Vicente Tan guilty beyond reasonable doubt for the crime of Estafa and hereby sentences the said accused to suffer an indeterminate sentence ranging from six (6) years and two (2) months of prision mayor as minimum to ten (10) years also of prision mayor as maximum and for the said accused to indemnify Nelson Tamares the sum of P45,000.00 as and by way of actual damage.

c) For lack of evidence, accused is hereby acquitted of the crime charged in Criminal case No. 92-105277.

Accused-appellant contends that ^¾

I.

THE COURT A QUO GRAVELY ERRED IN BELIEVING THE NARRATION OF THE PROSECUTION'S WITNESSES IN SPITE OF THE ABSENCE OF DOCUMENTARY EVIDENCE IN SUPPORT THEREOF.

II.

THE COURT A QUO ERRED IN GIVING CREDIBILITY TO PROSECUTION'S WITNESSES IN SPITE OF THE INCREDIBILITY OF THEIR TESTIMONIES.

III.

THE COURT A QUO GRAVELY ERRED IN RULING THAT THERE IS ENOUGH EVIDENCE TO SUPPORT THE CONVICTION OF THE ACCUSED BEYOND REASONABLE DOUBT.^[14]