

THIRD DIVISION

[G.R. No. 125044, July 13, 1998]

**IMELDA DARVIN, PETITIONER, VS. HON. COURT OF APPEALS
AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

DECISION

ROMERO, J.:

Before us is a petition for review of the decision of the Court of Appeals in C.A.-G.R. CR. No. 15624 dated January 31, 1996,^[1] which affirmed in toto the judgment of the Regional Trial Court, Branch 19, Bacoor, Cavite, convicting accused-appellant, Imelda Darvin for simple illegal recruitment under Article 38 and Article 39, in relation to Article 13 (b) and (c), of the Labor Code, as amended.

Accused-appellant was charged under the following information:

"That on or about the 13th day of April 1992, in the Municipality of Bacoor, Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, through fraudulent representation to one Macaria Toledo to the effect that she has the authority to recruit workers and employees for abroad and can facilitate the necessary papers in connection thereof, did, then and there, wilfully, unlawfully and feloniously, hire, recruit and promise a job abroad to one Macaria Toledo, without first securing the necessary license and permit from the Philippine Overseas Employment Administration to do so, thereby causing damage and prejudice to the aforesaid Macaria Toledo.

Contrary to law."^[2]

The evidence for the prosecution, based on the testimony of private respondent, Macaria Toledo, shows that sometime in March, 1992, she met accused-appellant Darvin in the latter's residence at Dimasalang, Imus, Cavite, through the introduction of their common friends, Florencio Jake Rivera and Leonila Rivera. In said meeting, accused-appellant allegedly convinced Toledo that by giving her P150,000.00, the latter can immediately leave for the United States without any appearance before the U.S. embassy.^[3] Thus, on April 13, 1992, Toledo gave Darvin the amount of P150,000.00, as evidenced by a receipt stating that the amount of P150,000.00 was for U.S. Visa and Air fare.^[4] After receiving the money, Darvin assured Toledo that she can leave within one week. However, when after a week, there was no word from Darvin, Toledo went to her residence to inquire about any development, but could not find Darvin. Thereafter, on May 7, 1992, Toledo filed a complaint with the Bacoor Police Station against Imelda Darvin. Upon further investigation, a certification was issued by the Philippine Overseas Employment Administration (POEA) stating that Imelda Darvin is neither licensed nor authorized to recruit workers for overseas employment.^[5] Accused-appellant was then charged for estafa and illegal recruitment by the Office of the Provincial Prosecutor of Cavite.

Accused-appellant, on the other hand, testified that she used to be connected with Dale Travel Agency and that in 1992, or thereabouts, she was assisting individuals in securing passports, visa, and airline tickets. She came to know Toledo through Florencio Jake Rivera, Jr. and Leonila Rivera, alleging that Toledo sought her help to secure a passport, US visa and airline tickets to the States. She claims that she did not promise any employment in the U.S. to Toledo. She, however, admits receiving the amount of P150,000.00 from the latter on April 13, 1992 but contends that it was used for necessary expenses of an intended trip to the United States of Toledo and her friend, Florencio Rivera^[6] as follows: P45,000.00 for plane fare for one person; P1,500.00 for passport, documentation and other incidental expenses for each person; P20,000.00 for visa application cost for each person; and P17,000.00 for services.^[7] After receiving the money, she allegedly told Toledo that the papers will be released within 45 days. She likewise testified that she was able to secure Toledo's passport on April 20, 1992 and even set up a date for an interview with the US embassy. Accused alleged that she was not engaged in illegal recruitment but merely acted as a travel agent in assisting individuals to secure passports and visa.

In its judgment rendered on June 17, 1993, the Bacoar, Cavite RTC found accused-appellant guilty of the crime of simple illegal recruitment but acquitted her of the crime of estafa. The dispositive portion of the judgment reads as follows:

"WHEREFORE, premises considered, accused Imelda Darvin is hereby found guilty beyond reasonable doubt of the crime of Simple Illegal Recruitment for having committed the prohibited practice as defined by paragraph (b) of Article 34 and punished by paragraph (c) of Article 39 of the Labor Code, as amended by PD 2018.

Accused Imelda Darvin is hereby ordered to suffer the prison term of Four (4) years, as minimum, to Eight (8) years, as maximum; and to pay the fine of P25,000.00.

Regarding her civil liability, she is hereby ordered to reimburse the private complainant the sum of P150,000.00 and attorney's fees of P10,000.00.

She is hereby acquitted of the crime of Estafa.

SO ORDERED."^[8]

On appeal, the Court of Appeals affirmed the decision of the trial court in toto, hence this petition.

Before this Court, accused-appellant assails the decision of the trial and appellate courts in convicting her of the crime of simple illegal recruitment. She contends that based on the evidence presented by the prosecution, her guilt was not proven beyond reasonable doubt.

We find the appeal impressed with merit.

Article 13 of the Labor Code, as amended, provides the definition of recruitment and placement as:

"x x x; b) 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."

On the other hand, Article 38 of the Labor Code provides:

a) Any recruitment activities, including the prohibited practices enumerated under Article 34 of this Code, to be undertaken by non-licensees or non-holders of authority shall be deemed illegal and punishable under Article 39 of this Code. The Ministry of Labor and Employment or any law enforcement officer may initiate complaints under this Article.

x x x

x x x

x x x.

Applied to the present case, to uphold the conviction of accused-appellant, two elements need to be shown: (1) the person charged with the crime must have undertaken recruitment activities; and (2) the said person does not have a license or authority to do so.^[9]

In this case, private respondent, Macaria Toledo alleged that she was offered a job in the United States as nursing aide^[10] by accused-appellant. In her direct examination, she testified as follows:

**"Atty
Alejandro:**

Q How did you come to know the accused?

Witness : I was introduced by my two friends. One of whom is my best friend. That according to them, this accused has connections and authorizations, that she can make people leave for abroad, sir.

Court What connections?

Witness That she has connections with the Embassy and with people whom she can approach regarding work abroad, your Honor.

x x x

x x

x

x x x

Q When you came to meet for the first time in Imus, Cavite, what transpired in that meeting of yours?

A When I came to her house, the accused convinced me that by means of P150,000.00, I will be able to leave immediately without any appearance to any embassy, non-appearance, Sir.

Q When you mentioned non-appearance, as told to you by the accused, precisely, what do you mean by that?

A I was told by the accused that non-appearance, means without working personally for my papers and through her efforts considering that she is