

SECOND DIVISION

[G.R. No. 227505, October 02, 2017]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ERLINDA RACHO Y SOMERA, ACCUSED-APPELLANT.**

DECISION

PERLAS-BERNABE, J.:

Before the Court is an ordinary appeal^[1] filed by accused-appellant Erlinda Racho y Somera (Racho) assailing the Decision^[2] dated October 15, 2015 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06932, which affirmed the Decision^[3] dated May 28, 2014 of the Regional Trial Court of Makati City, Branch 62 (RTC) in Criminal Case Nos. 05-1935, 05-1938, 05-1941, 05-1943, 05-1945, 05-1948, 05-1949, and 05-1951 convicting Racho of Illegal Recruitment in Large Scale, as defined and penalized under Section 6 (l) and (m), in relation to Section 7 (b) of Republic Act No. (RA) 8042,^[4] otherwise known as the Migrant Workers Overseas Filipino Act of 1995, and six (6) counts of Estafa under Article 315 paragraph 2 (a) of the Revised Penal Code.

The Facts

This case stemmed from, among others, an Information^[5] dated August 19, 2005 charging Radio for the crime of Illegal Recruitment in Large Scale, docketed as Criminal Case No. 05-1935, the accusatory portion of which reads:

CRIMINAL CASE NO. 05-1935

That in or about during [sic] the period from November, 2004 up to February 07, 2005 or prior thereto, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there without first obtaining a license or authority to recruit workers for overseas employment from the Philippine Overseas Employment Administration, willfully, unlawfully and feloniously recruit and promise employment/job placement and collect fee[s] from complainants Bernardo Pena, Arsenio N. Sevania, Maximo V. Gambon, Simeon Adame Filarca, Vincent B. Baidoz. Odelio C. Gasmien, Cirilo A. Arruejo, Romeo E. Torres, Renato P. Velasco, Rex D. Villaruz, Celso V. Doctolero, Renato L. Pescador, Rodolfo C. Pagal, William D. Villaruz, Franklin B. Delizo[,] and Dominador S. Pena as contract workers, without any license/authority from the Philippine Overseas Employment Administration (POEA) or by the Department of Labor and Employment (DOLE) to recruit workers for overseas employment.

CONTRARY TO LAW.

Racho was also charged with sixteen (16) counts^[6] of Estafa, of which only six (6) cases prospered and eventually, were appealed before the Court. The Informations for these six (6) cases are similarly worded, except for the details pertaining to the date of commission of the offense, name of the complainant, job recruited for, and the amount involved. Among others, the accusatory portion of the Information^[7] for Criminal Case No. 05-1938 involving the complainant Odelio C. Gasmen (Odelio) reads:

CRIMINAL CASE NO. 05-1938

That on or about the 26th of November, 2004 or prior thereto, in Makati, The Philippines, the above-named accused, did then and there willfully, unlawfully and feloniously defraud one Odelio C. Gasmen in the following manner, to wit: The said accused by false pretenses or fraudulent acts committed prior to or simultaneously with the commission of the fraud, to the effect that she can recruit workers for overseas employment and deploy complainant as construction worker in East Timor for a fee of Php100,000.00, which representation [she] well knew to be false and was only made to induce the aforementioned complainant to give and deliver, as in fact the said complainant gave and delivered, to her the said amount of [Php100,000.00], to the damage and prejudice of the said Odelio C. Gasmen in the aforementioned amount of Php100,000.00.

CONTRARY TO LAW.

The variations in the Informations for the other five (5) criminal cases, *i.e.*, Criminal Case Nos. 05-1941, 05-1945, 05-1948, 05-1949, and 05-1951, are summarized below:

Criminal Case No.	Date of Commission of the Offense	Complainant	Job Recruited For	Amount Involved
05-1941	January 13, 2005	Simeon Adame Filarca (Simeon)	Carpenter	P80,000.00
05-1945	January 13, 2005	Bernardo Peña (Bernardo)	Plumber/electrician	P80,000.00
05-1948	January 17, 2005	Renato L. Pescador (Renato)	Carpenter	P100,000.00
05-1949	January 18, 2005	William D. Villaruz (William)	Contract worker	P80,000.00
05-1951	February 24, 2005	Rodolfo C. Pagal (Rodolfo)	Contract worker	P60,000.00

All of the cases against Radio were consolidated and tried jointly.^[8] On May 24, 2011, Racho was arraigned and pleaded not guilty to all the charges against her.^[9]

During trial, the prosecution presented the testimonies of Bella Diaz (Bella), a senior Labor and Employment Officer from the Philippine Overseas Employment Administration, as well as of the complainants in the above-cited criminal cases (*i.e.*, Odelio, Simeon, Bernardo, Renato, and Rodolfo), with the exception of **William**, the complainant in **Criminal Case No. 05-1949**, who failed to appear despite his receipt of the Subpoenas dated February 28, 2012 and June 20, 2012 (Subpoenas).^[10] Another witness, Rex Villaruz (Rex), who was the complainant in **Criminal Case No. 05-1937**, gave his testimony in court.^[11] However, this latter case was provisionally dismissed by the RTC and as such, did not reach this Court.^[12]

In particular, Bella Diaz confirmed that Racho was neither licensed nor authorized to recruit workers for employment abroad as certified in a document dated July 12, 2012.^[13]

Meanwhile, Odelio, Simeon, Bernardo, Renato, Rodolfo, and Rex uniformly alleged that they heard either from a radio advertisement or a friend about an employment opportunity in East Timor linked to Racho. On separate dates, they went to meet with Racho either at her residence in Vigan, Ilocos Sur or her office in Makati City where they were briefed about the available position for them and the corresponding compensation. They were then asked to provide documents, fill out bio-data forms, and pay placement fees, which they did. They then left the Philippines on different dates and stayed in East Timor while waiting for their working visas. However, two to three months passed and yet no working visas were issued despite Radio's promises. Thus, they went back to the Philippines, and after failing to find Racho, filed their complaints before the Presidential Anti-Illegal Recruitment Task Force Hunter.^[14]

In the course of the proceedings, Racho moved that some cases be provisionally dismissed^[15] due to the failure of the other complainants to give their testimonies despite due notice. In an Order^[16] dated September 17, 2012, the RTC provisionally dismissed nine (9) Estafa cases,^[17] leaving the following cases to proceed: (a) the Illegal Recruitment in Large Scale case, *i.e.*, Crim. Case No. 05-1935; (b) the above-stated six Estafa cases - Criminal Case Nos. 05-1938, 05-1941, 05-1945, 05-1948, 05-1949, and 05-1951; and (c) an additional Estafa case, namely **Criminal Case No. 05-1943** filed by complainant Dominador S. Pena (Dominador), who, same as William, failed to give his testimony.

As to the cases which proceeded, the defense countered with the sole testimony of Racho, who denied the charges against her and argued that she was an auditor of PET Plans, Inc. from March 23, 2000 to August 31, 2005, making it highly unlikely for her to have engaged in the business of recruitment and promised employment abroad. She also belied the claim that she received the amounts allegedly paid by the complainants and insisted that the latter only found out about the employment abroad from another person over the radio.^[18]

The RTC Ruling

In a Decision^[19] dated May 28, 2014, the RTC found Racho guilty beyond

reasonable doubt of: (a) Illegal Recruitment in Large Scale in Criminal Case No. 05-1935, and accordingly, sentenced her to suffer life imprisonment and to pay a fine of P1,000,000.00; and (b) six (6) counts of Estafa in Criminal Case Nos. 05-1938, 05-1941, 05-1945, 05-1948, 05-1951, **including Criminal Case No. 05-1949**, and accordingly, sentenced her to suffer imprisonment for indeterminate periods^[20] and to pay^[21] complainants the amounts they paid as placement fees plus twelve percent (12%) per annum from the filing of the information until finality of its judgment.^[22]

At the outset, the RTC dismissed Criminal Case No. 05-1943 involving Dominador for failure of the prosecution to present any evidence.^[23]

On the other hand, in the Illegal Recruitment in Large Scale case, the RTC was convinced that Racho offered and promised employments in East Timor to complainants despite not having any license to recruit them. It found that Racho indeed required the complainants to submit their bio-data, birth certificates, and passports, as well as pay placement fees.^[24] As to the six (6) Estafa cases, the RTC held that the prosecution has proven Racho's misrepresentation that she could provide jobs to complainants in East Timor despite lack of authority from the POEA and that she demanded payment of placement fees. It added that Racho's deceit was underscored by the fact that complainants were stranded in East Timor without any jobs and upon their return to the country, could not find her to recover their payments.^[25]

Aggrieved, Racho appealed^[26] to the CA.

The CA Ruling

In a Decision^[27] dated October 15, 2015, the CA affirmed Racho's convictions *in toto*.^[28] It held that Racho's representation that she had the authority to deploy workers in East Timor for employment despite the absence of the required license or authority from the POEA, as well as her demand for payment of placement fees from the complainant, proved her guilt in the Illegal Recruitment in Large Scale and six (6) Estafa cases;^[29] hence, the instant appeal involving these cases.

The Issue Before the Court

The core issue for the Court's resolution is whether or not Racho is guilty beyond reasonable doubt of Illegal Recruitment in Large Scale and of Estafa.

The Court's Ruling

Settled is the rule that an appeal in a criminal case throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those raised as errors by the parties.^[30] "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine the records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."^[31]

In this light, the Court affirms Racho's convictions in Criminal Case No. 05-1935 for Illegal Recruitment in Large Scale, as well as the Estafa cases docketed as Criminal Case Nos. 05-1938, 05-1941, 05-1945, 05-1948, and 05-1951, but acquits her in Crim. Case No. 05-1949, *i.e.*, the Estafa case filed by William, for lack of evidence. Moreover, the Court reduces the damages awarded to Rodolfo, the complainant in Criminal Case No. 05-1951, from P60,000.00 to P35,000.00 to conform with the amount proven in court. Finally, the Court adjusts the penalties imposed on Racho as regards the Estafa cases in view of the recent amendment under RA 10951,^[32] as well as the interest rate pursuant to law.

I.

Illegal Recruitment in Large Scale is defined under Section 6 of RA 8042, to wit:

Section 6. Definition. - For purposes of this Act, illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referring, contact services-promising or advertising for employment abroad, whether for profit or not, when undertaken by a non-licensee or non-holder of authority contemplated under Article 13 (f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines: *Provided*, That any such non-licensee or non-holder who, in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed so engaged. It shall likewise include the following acts, whether committed by any person, whether a non-licensee, non-holder, licensee or holder of authority:

x x x x

Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed **committed in large scale if committed against three (3) or more persons individually or as a group.**
(Emphasis and underscoring supplied)

The elements of the offense are: (a) the offender has no valid license or authority to enable him to lawfully engage in recruitment and placement of workers; (b) he undertakes any of the activities within the meaning of "recruitment and placement" under Article 13 (b) of the Labor Code or any prohibited practices enumerated under Article 34 of the Labor Code (now Section 6 of RA 8042); and (c) he commits the same against three or more persons, individually or as a group.^[33] Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage.^[34]

In this case, both the RTC and the CA found that all these elements are present. The POEA certification,^[35] as confirmed by Bella Diaz, sufficiently established that Racho is neither licensed nor authorized to recruit workers for overseas employment. Clearly, a person or entity engaged in recruitment and placement activities without the requisite authority is engaged in illegal recruitment.^[36] The definition of "recruitment and placement" under Article 13 (b) of the Labor Code includes