

## SECOND DIVISION

[ G.R. No. 199211, June 04, 2014 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JERIC FERNANDEZ  
Y JAURIGUE, APPELLANT.**

### RESOLUTION

**BRION, J.:**

We decide the appeal, filed by appellant Jeric Fernandez, assailing the April 6, 2011 decision of the Court of Appeals (CA) in CA-G.R. CR-HC No. 03313.<sup>[1]</sup>

#### **The RTC Ruling**

In its February 11, 2008 decision,<sup>[2]</sup> the Regional Trial Court (RTC), Branch 211, Mandaluyong City, convicted the appellant of the crimes of illegal recruitment in large scale and five (5) counts of estafa committed against complainants Airene Etac, Jowel A. Baja, Joemar Aquino, Luis M. Bernardo and Anthony M. Canlas. The RTC gave full faith and credence to the testimonies of the complainants that the appellant promised them employment abroad. The trial court ruled that the appellant represented to the complainants that he had the power and ability to send them in Hongkong, and that by virtue of this representation and fraud, the complainants were convinced to part with their money in order to be employed. It also disregarded the appellant's defenses of denial and alibi.

For the crime of illegal recruitment in large scale in Criminal Case No. MC03-6278, the RTC sentenced the appellant to suffer the penalty of life imprisonment, and to pay a P100,000.00 fine. For the crime of estafa, the RTC sentenced the appellant to suffer the following indeterminate penalties: (a) four (4) years of *prision correccional*, as minimum, to nine (9) years of *prision mayor*, as maximum in Criminal Case No. MC03-6279; (b) four (4) years of *prision correccional*, as minimum, to seven (7) years of *prision mayor*, as maximum in Criminal Case No. MC03-6280; (c) four (4) years of *prision correccional*, as minimum, to seven (7) years of *prision mayor*, as maximum in Criminal Case No. MC03-6281; (d) four (4) years of *prision correccional*, as minimum, to eight (8) years of *prision mayor*, as maximum in Criminal Case No. MC03-6282 ; and (e) four (4) years of *prision correccional*, as minimum, to eight (8) years of *prision mayor*, as maximum in Criminal Case No. MC03-6283.

The RTC also ordered the appellant to indemnify Etac the sum of P35,000.00; Baja the sum of P29,550.00; Aquino the sum of P45,800.00; Bernardo the sum of P30,500.00; and Canlas the sum of P29,550.00.

#### **The CA Ruling**

On appeal, the CA upheld the factual findings of the RTC. It agreed with the trial

court that all the elements of illegal recruitment, as defined under Article 13(b), in relation to Article 34 of the of the Labor Code, were sufficiently established by the prosecution's evidence. The CA held that the appellant's acts of promising the complainants that they would be deployed for work abroad after they paid him their placement fees, and his misrepresentations concerning his purported power and authority despite the lack of license, are constitutive of illegal recruitment in large scale.

The CA also declared that appellant's assurances that he could deploy the complainants for employment in Hongkong constitutes estafa.

### **Our Ruling**

**We deny the appeal and affirm the appellant's convictions. We however, modify the penalties imposed in the five counts of estafa.**

### ***Illegal Recruitment In Large Scale***

Article 38 of the Labor Code defines illegal recruitment as "any recruitment activities, including the prohibited practices enumerated under Article 34 of (the Labor Code), to be undertaken by non-licensees or non-holders of authority." The term "recruitment and placement" refers to any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers, including 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 law imposes a higher penalty when the illegal recruitment is committed by a syndicate or in large scale as they are considered an offense involving economic sabotage. Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring and/or confederating with one another in carrying out any unlawful or illegal transaction, enterprise or scheme. It is deemed committed in large scale if committed against three (3) or more persons individually or as a group.<sup>[3]</sup>

For illegal recruitment in large scale to prosper, the prosecution has to prove three essential elements, namely: (1) the accused undertook a recruitment activity under Article 13(b) or any prohibited practice under Article 34 of the Labor Code; (2) the accused did not have the license or the authority to lawfully engage in the recruitment and placement of workers; and (3) the accused committed such illegal activity against three or more persons individually or as a group.

In the present case, the appellant promised the *five complainants* that there were jobs available for them in Hongkong; and that through his help, they could be deployed for work within a month or two. He exacted money from them for the plane ticket, hotel accommodation, processing of visa and placement fees. Notably, the prosecution presented a Certification dated January 10, 2003 issued by Felicitas Q. Bay, Director II of the Philippine Overseas Employment Agency (POEA) Licensing Branch, showing that the appellant had no authority or license to lawfully engage in the recruitment and placement of workers. These acts, to our mind, constitute illegal recruitment. There is illegal recruitment when one who does not possess the necessary authority or license gives the impression of having the ability to send a worker abroad. Corollarily, where the offense is committed against three or more