

FIRST DIVISION

[G.R. No. 183099, February 03, 2010]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RACHELLE
BALAGAN AND HERMINIA AVILA, APPELLANTS.**

D E C I S I O N

CARPIO MORALES, J.:

From the November 29, 2007 Decision^[1] of the Court of Appeals which affirmed with modification the July 19, 2006 Decision^[2] of the Regional Trial Court, Branch 118, Pasay City convicting Rachele Balagan and Herminia Avila (appellants) in Criminal Case Nos. 03-2683 and 03-2684, for syndicated illegal recruitment and estafa, respectively, appellants come to the Court.

The Informations in the cases read:

**Criminal Case No. 03-2683
(For Syndicated Illegal Recruitment)**

That on or about the period comprising March 21, 2003 to March 28, 2003, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, by falsely representing themselves to have the capacity to contract, enlist, employ, and recruit workers for overseas deployment/employment as Factory Worker in Ireland, did then and there willfully, unlawfully, feloniously, for a fee recruit and promise overseas deployment/employment to private complainant **Michael O. Fernandez** without first securing the required license or authority from the Philippine Overseas Employment Agency.

Contrary to law.^[3] (emphasis in the original)

**Criminal Case No. 03-2684
(For Estafa)**

That on or about the period comprising March 21, 2003 to March 28, 2003, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, defrauded private complainant **Michael O. Fernandez** in the following manner to wit: that accused, with deliberate intent to defraud and deceive and pretending to possess the capacity to contract, enlist and employ or deploy private complainant as a Factory Worker in Ireland, did then and

there willfully, unlawfully and feloniously demand and did actually receive from private complainant the total amount of Php.57,000.00 for and as his supposed work permit, job placement or overseas deployment and POEA processing fees, knowing said manifestation and representation to be false and fraudulent and once in possession of said amount and far from complying with their promise of employment or deployment and despite demands to return the amount paid, accused with intent to defraud, did misappropriate, misapply and convert to their own personal use and benefit private complainant's **Php. 57,000.00**, to the damage and prejudice of the said complainant in the total amount of **Php. 57,000.00**.

Contrary to law.^[4] (emphasis in the original; underscoring supplied)

As summarized by the trial court which is supported by the records of the cases, the evidence for the prosecution and that for the defense are as follows:

EVIDENCE OF THE PROSECUTION

Fernandez testified that sometime in February 2003, he together with a friend who knows Rosabel Balagan, mother of Rachel, went to EGI Building located at Gil Puyat Street, Pasay City purposely to apply for work abroad. Once in the said office, he was able to talk to Rosabel, Rachel Herminia and some other applicants. He knows that Rachelle and Herminia were clerk and secretary, respectively, at the said office and they entice people that they could send workers abroad. The accused asked him if he was really interested in applying for work and when he answered in the affirmative, Rosabel told him to submit his passport, ID pictures and a "bank account" of P500.00. After he had submitted the requirements, Rosabel told him that the amount of P150,000.00 is needed for deployment to Ireland and he will be able to leave by 28 March 2003. Rachel and Herminia affirmed to him the statements of Rosabel.

On 21 March 2003, he gave P37,000.00 to Rosabel and on the following day additional P20,000.00, or a total of P57,000.00 out of the P150,000.00 asked by the accused. He was supposed to give the money personally to Rosabel but the latter told him to hand the same to Herminia who then issued official receipts nos. 263 and 264 to him. The receipts were signed by Rosabel.

He and the other complainants whom he got acquainted with were not able to leave the country on 28 March 2003. He then asked Rosabel to return the money to him but the latter refused to do so. When he later on went to the POEA he learned that the accused are not licensed to recruit workers for abroad. Thereafter, he lodged a complaint before the CIDG where he executed his two (2) affidavits.

On cross-examination, he testified that it was Rosabel who promised to send him abroad; that the family of Rosabel owns the travel agency that

recruited him and he has no proof whatsoever that Rachel and Herminia are business partners of the former; and that Herminia and Cristino were more than mere employees of Rosabel because they act as her agents.

On additional cross-examination, he admitted that the receipts issued to him were for documentation purposes only; that he was aware that the office was only a Travel Consultancy; and that if not for his companion, Kim Folgueras, who referred him to the office of the accused, he would not have come to know of Rosabel.

On redirect examination, he identified an application for tenant contractor identification card showing, among others, the names of Rosabel Balagan as General Manager, Herminia Avila as Secretary, Rachelle Balagan as Clerk, and an advertisement in the souvenir program of San Manuel Town Fiesta 2003 showing the greetings from Rosabel Travel Consultancy, with the name of Rosabel as President and General Manager, Herminia as Secretary and Administrative Assistant, and Rachelle as Clerk and other names of the office staff.

He positively identified Rachel and Herminia. He also identified his two (2) affidavits.

When the prosecution called on Bolivar, the defense stipulated that said witness is a Senior Labor and Employment officer at the POEA; that Rachel and Herminia were both not authorized by POEA to engage in the business of recruitment for abroad as evidenced by a certification issued by said office; and that a license for travel agency is different from that of a recruitment agency.

EVIDENCE OF THE DEFENSE

Herminia denied that she has anything to do with the cases filed by Fernandez, much less with receipt for the total amount of P57,000.00 which were signed by Rosabel and that she was connected with Rosabel Travel Consultancy. She alleged that she and her husband Edwin were also applicants at Rosabel Travel Consultancy as evidenced by an official receipt issued by Rosabel which shows that they paid said office for their travel to Australia. To further support her claim, she also presented her passport.

She further testified that she met Fernandez at the boarding house and often saw him when the latter was following up his application at the agency; that she was included as an accused so that Fernandez could use her in going after Rosabel who at that time was not yet arrested; and since she was then living in the boarding house of Rosabel, Fernandez suspected that she might know where Rosabel was hiding.

On cross-examination, she readily identified the name and picture appearing in the advertisement in the souvenir program of San Manuel Town Fiesta 2003 as hers and admitted that she has no conflict or misunderstanding whatsoever with Fernandez.