

FIRST DIVISION

[G.R. No. 187730, June 29, 2010]

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. RODOLFO GALLO Y GADOT, ACCUSED-APPELLANT, FIDES PACARDO Y JUNGCO AND PILAR MANTA Y DUNGO, ACCUSED.

D E C I S I O N

VELASCO JR., J.:

The Case

This is an appeal from the Decision^[1] dated December 24, 2008 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02764 entitled *People of the Philippines v. Rodolfo Gallo y Gadot (accused-appellant), Fides Pacardo y Jungco and Pilar Manta y Dungo (accused)*, which affirmed the Decision^[2] dated March 15, 2007 of the Regional Trial Court (RTC), Branch 30 in Manila which convicted the accused-appellant Rodolfo Gallo y Gadot ("accused-appellant") of syndicated illegal recruitment in Criminal Case No. 02-206293 and *estafa* in Criminal Case No. 02-206297.

The Facts

Originally, accused-appellant Gallo and accused Fides Pacardo ("Pacardo") and Pilar Manta ("Manta"), together with Mardeolyn Martir ("Mardeolyn") and nine (9) others, were charged with syndicated illegal recruitment and eighteen (18) counts of *estafa* committed against eighteen complainants, including Edgardo V. Dela Caza ("Dela Caza"), Sandy Guantero ("Guantero") and Danilo Sare ("Sare"). The cases were respectively docketed as Criminal Case Nos. 02-2062936 to 02-206311. However, records reveal that only Criminal Case No. 02-206293, which was filed against accused-appellant Gallo, Pacardo and Manta for syndicated illegal recruitment, and Criminal Case Nos. 02-206297, 02-206300 and 02-206308, which were filed against accused-appellant Gallo, Pacardo and Manta for *estafa*, proceeded to trial due to the fact that the rest of the accused remained at large. Further, the other cases, Criminal Case Nos. 02-206294 to 02-206296, 02-206298 to 02-206299, 02-206301 to 02-206307 and 02-206309 to 02-206311 were likewise *provisionally* dismissed upon motion of Pacardo, Manta and accused-appellant for failure of the respective complainants in said cases to appear and testify during trial.

It should also be noted that after trial, Pacardo and Manta were acquitted in Criminal Case Nos. 02-206293, 02-206297, 02-206300 and 02-206308 for insufficiency of evidence. Likewise, accused-appellant Gallo was similarly acquitted in Criminal Case Nos. 02-206300, the case filed by Guantero, and 02-206308, the case filed by Sare. However, accused-appellant was found guilty beyond reasonable doubt in Criminal Case Nos. 02-206293 and 02-206297, both filed by Dela Caza, for syndicated illegal recruitment and *estafa*, respectively.

Thus, the present appeal concerns solely accused-appellant's conviction for syndicated illegal recruitment in Criminal Case No. 02-206293 and for *estafa* in Criminal Case No. 02-206297.

In Criminal Case No. 02-206293, the information charges the accused-appellant, together with the others, as follows:

The undersigned accuses MARDEOLYN MARTIR, ISMAEL GALANZA, NELMAR MARTIR, MARCELINO MARTIR, NORMAN MARTIR, NELSON MARTIR, MA. CECILIA M. RAMOS, LULU MENDANES, FIDES PACARDO y JUNGCO, **RODOLFO GALLO y GADOT**, PILAR MANTA y DUNGO, ELEONOR PANUNCIO and YEO SIN UNG of a violation of Section 6(a), (l) and (m) of Republic Act 8042, otherwise known as the Migrant Workers and Overseas Filipino Workers Act of 1995, committed by a syndicate and in large scale, as follows:

That in or about and during the period comprised between November 2000 and December, 2001, inclusive, in the City of Manila, Philippines, the said accused conspiring and confederating together and helping with one another, representing themselves to have the capacity to contract, enlist and transport Filipino workers for employment abroad, did then and there willfully and unlawfully, for a fee, recruit and promise employment/job placement abroad to FERDINAND ASISTIN, ENTICE BRENDON, REYMOND G. CENA, EDGARDO V. DELA CAZA, RAYMUND EDAYA, SANDY O. GUANTENO, RENATO V. HUFALAR, ELENA JUBICO, LUPO A. MANALO, ALMA V. MENOR, ROGELIO S. MORON, FEDILA G. NAIPA, OSCAR RAMIREZ, MARISOL L. SABALDAN, DANILO SARE, MARY BETH SARDON, JOHNNY SOLATORIO and JOEL TINIO in Korea as factory workers and charge or accept directly or indirectly from said FERDINAND ASISTIN the amount of P45,000.00; ENTICE BRENDON - P35,000.00; REYMOND G. CENA - P30,000.00; EDGARDO V. DELA CAZA - P45,000.00; RAYMUND EDAYA - P100,000.00; SANDY O. GUANTENO - P35,000.00; RENATO V. HUFALAR - P70,000.00; ELENA JUBICO - P30,000.00; LUPO A. MANALO - P75,000.00; ALMA V. MENOR - P45,000.00; ROGELIO S. MORON - P70,000.00; FEDILA G. NAIPA - P45,000.00; OSCAR RAMIREZ - P45,000.00; MARISOL L. SABALDAN - P75,000.00; DANILO SARE - P100,000.00; MARY BETH SARDON - P25,000.00; JOHNNY SOLATORIO - P35,000.00; and JOEL TINIO - P120,000.00 as placement fees in connection with their overseas employment, which amounts are in excess of or greater than those specified in the schedule of allowable fees prescribed by the POEA Board Resolution No. 02, Series 1998, and without valid reasons and without the fault of the said complainants failed to actually deploy them and failed to reimburse the expenses incurred by the said complainants in connection with their documentation and processing for purposes of their deployment.^[3] (Emphasis supplied)

In Criminal Case No. 02-206297, the information reads:

That on or about May 28, 2001, in the City of Manila, Philippines, the said accused conspiring and confederating together and helping with [sic] one another, did then and there willfully, unlawfully and feloniously defraud EDGARDO V. DELA CAZA, in the following manner, to wit: the said accused by means of false manifestations and fraudulent representations which they made to the latter, prior to and even simultaneous with the commission of the fraud, to the effect that they had the power and capacity to recruit and employ said EDGARDO V. DELA CAZA in Korea as factory worker and could facilitate the processing of the pertinent papers if given the necessary amount to meet the requirements thereof; induced and succeeded in inducing said EDGARDO V. DELA CAZA to give and deliver, as in fact, he gave and delivered to said accused the amount of P45,000.00 on the strength of said manifestations and representations, said accused well knowing that the same were false and untrue and were made [solely] for the purpose of obtaining, as in fact they did obtain the said amount of P45,000.00 which amount once in their possession, with intent to defraud said [EDGARDO] V. DELA CAZA, they willfully, unlawfully and feloniously misappropriated, misapplied and converted the said amount of P45,000.00 to their own personal use and benefit, to the damage and prejudice of the said EDGARDO V. DELA CAZA in the aforesaid amount of P45,000.00, Philippine currency.

CONTRARY TO LAW.^[4]

When arraigned on January 19, 2004, accused-appellant Gallo entered a plea of not guilty to all charges.

On March 3, 2004, the pre-trial was terminated and trial ensued, thereafter.

During the trial, the prosecution presented as their witnesses, Armando Albines Roa, the Philippine Overseas Employment Administration (POEA) representative and private complainants Dela Caza, Guanteno and Sare. On the other hand, the defense presented as its witnesses, accused-appellant Gallo, Pacardo and Manta.

Version of the Prosecution

On May 22, 2001, Dela Caza was introduced by Eleanor Panuncio to accused-appellant Gallo, Pacardo, Manta, Mardeolyn, Lulu Mendanes, Yeo Sin Ung and another Korean national at the office of MPM International Recruitment and Promotion Agency ("MPM Agency") located in Malate, Manila.

Dela Caza was told that Mardeolyn was the President of MPM Agency, while Nelmar Martir was one of the incorporators. Also, that Marcelino Martir, Norman Martir, Nelson Martir and Ma. Cecilia Ramos were its board members. Lulu Mendanes acted as the cashier and accountant, while Pacardo acted as the agency's employee who was in charge of the records of the applicants. Manta, on the other hand, was also an employee who was tasked to deliver documents to the Korean embassy.

Accused-appellant Gallo then introduced himself as a relative of Mardeolyn and informed Dela Caza that the agency was able to send many workers abroad. Together with Pacardo and Manta, he also told Dela Caza about the placement fee of

One Hundred Fifty Thousand Pesos (PhP 150,000) with a down payment of Forty-Five Thousand Pesos (PhP 45,000) and the balance to be paid through salary deduction.

Dela Caza, together with the other applicants, were briefed by Mardeolyn about the processing of their application papers for job placement in Korea as a factory worker and their possible salary. Accused Yeo Sin Ung also gave a briefing about the business and what to expect from the company and the salary.

With accused-appellant's assurance that many workers have been sent abroad, as well as the presence of the two (2) Korean nationals and upon being shown the visas procured for the deployed workers, Dela Caza was convinced to part with his money. Thus, on May 29, 2001, he paid Forty-Five Thousand Pesos (PhP 45,000) to MPM Agency through accused-appellant Gallo who, while in the presence of Pacardo, Manta and Mardeolyn, issued and signed Official Receipt No. 401.

Two (2) weeks after paying MPM Agency, Dela Caza went back to the agency's office in Malate, Manila only to discover that the office had moved to a new location at Batangas Street, Brgy. San Isidro, Makati. He proceeded to the new address and found out that the agency was renamed to New Filipino Manpower Development & Services, Inc. ("New Filipino"). At the new office, he talked to Pacardo, Manta, Mardeolyn, Lulu Mendanes and accused-appellant Gallo. He was informed that the transfer was done for easy accessibility to clients and for the purpose of changing the name of the agency.

Dela Caza decided to withdraw his application and recover the amount he paid but Mardeolyn, Pacardo, Manta and Lulu Mendanes talked him out from pursuing his decision. On the other hand, accused-appellant Gallo even denied any knowledge about the money.

After two (2) more months of waiting in vain to be deployed, Dela Caza and the other applicants decided to take action. The first attempt was unsuccessful because the agency again moved to another place. However, with the help of the Office of Ambassador Señeres and the Western Police District, they were able to locate the new address at 500 Prudential Building, Carriedo, Manila. The agency explained that it had to move in order to separate those who are applying as entertainers from those applying as factory workers. Accused-appellant Gallo, together with Pacardo and Manta, were then arrested.

The testimony of prosecution witness Armando Albines Roa, a POEA employee, was dispensed with after the prosecution and defense stipulated and admitted to the existence of the following documents:

1. Certification issued by Felicitas Q. Bay, Director II, Licensing Branch of the POEA to the effect that "New Filipino Manpower Development & Services, Inc., with office address at 1256 Batangas St., Brgy. San Isidro, Makati City, was a licensed landbased agency whose license expired on December 10, 2001 and was delisted from the roster of licensed agencies on December 14, 2001." It further certified that "Fides J. Pacardo was the agency's Recruitment

Officer";

2. Certification issued by Felicitas Q. Bay of the POEA to the effect that MPM International Recruitment and Promotion is not licensed by the POEA to recruit workers for overseas employment;
3. Certified copy of POEA Memorandum Circular No. 14, Series of 1999 regarding placement fee ceiling for landbased workers.
4. Certified copy of POEA Memorandum Circular No. 09, Series of 1998 on the placement fee ceiling for Taiwan and Korean markets, and
5. Certified copy of POEA Governing Board Resolution No. 02, series of 1998.

Version of the Defense

For his defense, accused-appellant denied having any part in the recruitment of Dela Caza. In fact, he testified that he also applied with MPM Agency for deployment to Korea as a factory worker. According to him, he gave his application directly with Mardeolyn because she was his town mate and he was allowed to pay only Ten Thousand Pesos (PhP 10,000) as processing fee. Further, in order to facilitate the processing of his papers, he agreed to perform some tasks for the agency, such as taking photographs of the visa and passport of applicants, running errands and performing such other tasks assigned to him, without salary except for some allowance. He said that he only saw Dela Caza one or twice at the agency's office when he applied for work abroad. Lastly, that he was also promised deployment abroad but it never materialized.

Ruling of the Trial Court

On March 15, 2007, the RTC rendered its Decision convicting the accused of syndicated illegal recruitment and *estafa*. The dispositive portion reads:

WHEREFORE, judgment is hereby rendered as follows:

- I. Accused FIDES PACARDO y JUNGO and PILAR MANTA y DUNGO are hereby ACQUITTED of the crimes charged in Criminal Cases Nos. 02-206293, 02-206297, 02-206300 and 02-206308;
- II. Accused RODOLFO GALLO y GADOT is found guilty beyond reasonable doubt in Criminal Case No. 02-206293 of the crime of Illegal Recruitment committed by a syndicate and is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of ONE MILLION (Php1,000,000.00) PESOS. He is also ordered to indemnify EDGARDO DELA CAZA of the sum of FORTY-FIVE THOUSAND (Php45,000.00) PESOS with legal interest from the filing of the information on September 18, 2002 until fully paid.