

THIRD DIVISION

[G.R. No. 170834, August 29, 2008]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ANTONIO NOGRA, ACCUSED-APPELANT.**

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before the Court is an appeal from the Decision^[1] dated August 31, 2005 of the Court of Appeals (CA) in CA-G.R. C.R. No. 00244 affirming the Judgment of the Regional Trial Court (RTC), Branch 19, Naga City in Criminal Case No. 98-7182, convicting Antonio Nogra (appellant) of large scale illegal recruitment under Section 6(m) in relation to Section 7(b) of Republic Act No. 8042 (R.A. No. 8042),^[2] otherwise known as the "Migrant Workers and Overseas Filipinos Act of 1995."^[3]

The inculpatory portion of the Information charging one Lorna G. Orciga and appellant with large scale illegal recruitment reads as follows:

That sometime during the period of March 1997 to November, 1997 in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being the General Manager and Operations Manager of LORAN INTERNATIONAL OVERSEAS RECRUITMENT CO., LTD., with office at Concepcion Grande, Naga City, conspiring, confederating together and mutually helping each other, representing themselves to have the capacity to contract, enlist, hire and transport Filipino workers for employment abroad, did then and there willfully, unlawfully and criminally, for a fee, recruit and promise employment/job placement to the herein complaining witnesses RENATO ALDEN, OLIVER SARMIENTO, FE ZABALLA, TEOFILA LUALHATI, PILIPINA MENDOZA and KERWIN DONACAO, but failed to actually deploy them without valid reason, as well as to reimburse their documentation, placement and processing expenses for purposes of deployment despite their repeated demands for the return of the same, to their damage and prejudice in the amounts as may be proven in court.

CONTRARY TO LAW.^[4]

Only appellant was brought to the jurisdiction of the trial court since Lorna G. Orciga was then and still is at large. Arraigned with the assistance of counsel, appellant entered a plea of "NOT GUILTY" to the crime charged. Thereafter, trial of the case ensued.

Of the six complainants, the prosecution was able to present five of them, namely: Renato Alden, Fe Zaballa, Teofila Lualhati, Filipina Mendoza and Kerwin Donacao. Anaielyn Sarmiento, wife of complainant Oliver Sarmiento, also testified for the

prosecution.

The facts, as established by the prosecution, are aptly summarized by the Office of the Solicitor General (OSG), as follows:

Appellant held office at Loran International Overseas Recruitment Co., (Loran) in Concepcion Grande, Naga City (p. 4, TSN, October 19, 1998). A nameplate on his table prominently displayed his name and position as operations manager (p. 11, TSN, November 17, 1998; p. 4, TSN, January 12, 1999; p. 21, TSN, November 19, 1998). The license of Loran also indicated appellant as the operations manager (p. 5, TSN, February 10, 1999). The POEA files also reflect his position as operations manager of Loran (Exhibit L to L-4, pp. 5-9, TSN, November 19, 1998).

Sometime in December 1996, Renato Alden went to Loran to apply for a job as hotel worker for Saipan. He was interviewed by appellant, who required Alden to submit an NBI clearance and medical certificate and to pay the placement fee. Alden paid the amount of P31,000.00. The additional amount of P4,000.00 was to be paid prior to his departure to Saipan (pp. 5-6, TSN, November 17, 1998). Appellant promised Alden that he would leave within a period of three to four months. After one year of waiting Alden was not able to leave. Alden filed a complaint with the NBI when he was not able to recover the amount and could no longer talk with appellant (p. 6, TSN, November 17, 1998).

On April 18, 1997, Teofila Lualhati applied for employment as hotel worker for Saipan with Loran (pp. 1-3, 10, TSN, November 19, 1998). Appellant required her to submit an NBI clearance and medical certificate and to pay the processing fee in the amount of P35,000.00 so she could leave immediately. She paid the amount of P35,000.00 to Loran's secretary in the presence of appellant. She was promised that within 120 days or 4 months she would be able to leave (pp. 11-13, TSN, November 19, 1998). Despite repeated follow-ups, Lualhati was unable to work in Saipan. She demanded the refund of the processing fee. When the amount was not returned to her, she filed a complaint with the NBI (pp. 14-15, TSN, November 19, 1998).

Sometime in April 1998, Filipina Mendoza went to Loran to apply for employment as hotel worker (p. 4, TSN, July 12, 1999). She paid the amount of P35,000.00 as placement fee. When she was not able to work abroad, she went to Loran and sought the return of P35,000.00 from appellant (p. 7, TSN, January 21, 1999).

Sometime in October 1997, Kerwin Donacao went to Loran to apply for employment as purchaser in Saipan (p. 4, TSN, February 10, 1999). He was required to submit NBI clearance, police clearance, previous employment certificate and his passport. He paid the placement fee of P35,000.00 (pp.4-5, TSN, February 10, 1999). After paying the amount, he was told to wait for two to three months. When he was not able to leave for Saipan, he demanded the return of the placement fee, which was not refunded (pp. 6-7, TSN, February 10, 1999).

During the first week of November 1997, Annelyn Sarmiento and her husband, Oliver Sarmiento, applied for overseas employment. For the application of Oliver Sarmiento, they submitted his medical certificate and certification of previous employment. They were also made to pay the amount of P27,000.00 as processing fee. Oliver Sarmiento was promised that within 1 month, he would be able to leave. Initially, Oliver Sarmiento was told that allegedly his visa was yet to be obtained. When he was not able to leave and what he paid was not refunded, he filed a complaint with the NBI (pp. 4-6, TSN, April 23, 1999).

Sometime in May 1997, Fe Zaballa applied for overseas employment in Saipan with Loran (p. 4, TSN, May 21, 1999). She was required to submit her medical certificate, original copy of her birth certificate, NBI clearance and police clearance. She was also required to pay the amount of P35,000.00 as placement fee. When she could not be deployed, she sought to recover the amount she paid, which was not returned (pp. 7-8, TSN, May 2, 1999).^[5]

On the other hand, appellant presented the following evidence:

The defense presented [appellant] Antonio Nogra and the agency's secretary and cashier, Maritess Mesina.

From their testimonies it was established that LORAN INTERNATIONAL OVERSEAS RECRUITMENT CO., LTD., (LORAN, for brevity) was owned by accused Lorna Orciga and Japanese national Kataru Tanaka (TSN, September 30, 2000, p. 7). Sometime in July 1994, [appellant] Antonio Nogra read from outside the agency's main office at Libertad, Mandaluyong City that it was in need of a liaison officer. He applied for the position. The part-owner and co-accused, Lorna Orciga, hired him instead as Operations Manager as the agency was then still in the process of completing the list of personnel to be submitted to the POEA. (TSN, January 31, 2001, p. 5).

[Appellant] Nogra started working with LORAN in October 1994. In 1995, he was transferred to Naga City when the agency opened a branch office thereat. Although he was designated as the Operations Manager, [appellant] Nogra was a mere employee of the agency. He was receiving a monthly salary of P5,000.00 and additional P2,000.00 monthly meal allowance. He was in-charge of the advertisement of the company. He also drove for the company. He fetched from the airport the agency's visitors and guests and drove them to hotels and other places. (TSN, May 3, 2000, pp. 2-9).

Although part-owner Lorna Orciga was stationed in Manila, she, however, actually remained in control of the branch office in Naga City. She conducted the final interview of the applicants and transacted with the foreign employers. She also controlled the financial matters and assessment fees of the agency in Naga City (TSN, September 20, 2000, pp. 8-9). The placement and processing fees collected by the agency in Naga City were all deposited in the bank account of Lorna Orciga and not

a single centavo went to the benefit of [appellant] Nogra (TSN, January 10, 2000, pp. 14-22).^[6]

On March 26, 2003, the RTC rendered Judgment^[7] finding appellant guilty beyond reasonable doubt of the crime charged. The *fallo* of the decision reads:

WHEREFORE, the Court finds the accused ANTONIO NOGRA guilty beyond reasonable doubt of the crime of Illegal Recruitment Committed in Large Scale defined under Sections 6(m) and 7(b) of RA 8042, otherwise known as The Migrant Workers and Overseas Filipinos Act of 1995 and, accordingly, hereby imposes upon him the penalty of life imprisonment and a fine of Five hundred thousand pesos (P500,000.00).

SO ORDERED.^[8]

On April 10, 2003, appellant filed a Notice of Appeal.^[9] The RTC ordered the transmittal of the entire records of the case to this Court.

Conformably to the ruling in *People v. Mateo*,^[10] the case was referred to the CA for intermediate review.^[11]

On August 31, 2005, the CA rendered a Decision^[12] affirming the decision of the RTC. The CA held that being an employee is not a valid defense since employees who have knowledge and active participation in the recruitment activities may be criminally liable for illegal recruitment activities, based upon this Court's ruling in *People v. Chowdury*^[13] and *People v. Corpuz*,^[14] that appellant had knowledge of and active participation in the recruitment activities since all the prosecution witnesses pinpointed appellant as the one whom they initially approached regarding their plans of working overseas and he was the one who told them about the fees they had to pay, as well as the papers that they had to submit; that the mere fact that appellant was not issued special authority to recruit does not exculpate him from any liability but rather strongly suggests his guilt; that appellant's invocation of non-flight cannot be weighed in his favor since there is no established rule that non-flight is, in every instance, an indication of innocence.

A Notice of Appeal^[15] having been timely filed by appellant, the CA forwarded the records of the case to this Court for further review.

In his Brief, appellant assigns as errors the following:

I

THE TRIAL COURT ERRED IN NOT FINDING THAT THE ACCUSED-APPELLANT WAS A MERE EMPLOYEE OF THE RECRUITMENT AGENCY DESPITE HIS DESIGNATION AS ITS OPERATIONS MANAGER.

II

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE OFFENSE-CHARGED DESPITE THE FACT THAT UNDER THE LAW, HE WAS NOT CRIMINALLY LIABLE FOR HIS AGENCY'S TRANSACTIONS.^[16]