

SECOND DIVISION

[G.R. No. 176169, November 14, 2008]

**ROSARIO NASI-VILLAR, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

DECISION

TINGA, J.:

This is a Petition for Review^[1] under Rule 45 of the Rules of Court filed by petitioner Rosario Nasi-Villar assailing the Decision^[2] dated 27 June 2005 and Resolution^[3] dated 28 November 2006 of the Court of Appeals. This case originated from an Information^[4] for Illegal Recruitment as defined under Sections 6 and 7 of Republic Act (R.A.)

No. 8042^[5] filed by the Office of the Provincial Prosecutor of Davao del Sur on 5 October 1998 for acts committed by petitioner and one Dolores Placa in or about January 1993. The Information reads:

That on [*sic*] or about the month of [January 1993], in the Municipality of Sta. Cruz, Province of Davao del Sur, Philippines and within the jurisdiction of the Honorable Court, the aforementioned accused, conspiring together, confederating with and mutually helping one another through fraudulent representation and deceitful machination, did then and there [willfully], unlawfully and feloniously recruit Nila Panilag for employment abroad[,] demand and receive the amount of P6,500.00 Philippine Currency [*sic*] as placement fee[,], the said accused being a non-licensee or non-holder of authority to engage in the recruitment of workers abroad to the damage and prejudice of the herein offended party.

CONTRARY TO LAW.^[6]

On 3 July 2002, after due trial, the Regional Trial Court (RTC), Br. 18, Digos City, Davao del Sur found the evidence presented by the prosecution to be more credible than that presented by the defense and thus held petitioner liable for the offense of illegal recruitment under the Labor Code, as amended.^[7] The dispositive portion of the decision reads:

WHEREFORE, premises considered, the Court hereby finds accused ROSARIO NASI-VILLAR GUILTY BEYOND REASONABLE DOUBT of Illegal Recruitment and, in accordance with the penalty set forth under the Labor Code, as amended, said accused is hereby sentenced to an indeterminate penalty ranging from FOUR YEARS as minimum to FIVE YEARS as maximum.

On the civil aspect of the case, there being no substantial proof

presented to justify a grant of civil damages, this Court makes no pronouncement thereon.

With respect to accused Ma. Dolores Placa, who is still at large, the records of this case are hereby sent to the archives to be retrieved in the event that said accused would be apprehended. Issue an alias warrant of arrest for the apprehension of said accused.

SO ORDERED.^[8]

Petitioner appealed to the Court of Appeals raising as sole issue the alleged error by the trial court in finding her guilty of illegal recruitment on the basis of the trial court's appreciation of the evidence presented by the prosecution.

The Court of Appeals, in its Decision dated 27 June 2005,^[9] following the principle that an appeal in a criminal case throws the whole case wide open for review, noted that the criminal acts alleged to have been committed happened sometime in 1993. However, R.A. No. 8042, under which petitioner was charged, was approved only on 7 June 1995 and took effect on 15 July 1995. Thus, the Court of Appeals declared that petitioner should have been charged under the Labor Code, in particular Art. 13(b) thereof, and not under R.A. No. 8042. Accordingly, it made its findings on the basis of the provisions of the Labor Code and found petitioner liable under Art. 38, in relation to Art. 13(b), and Art. 39 of the Labor Code. The appellate court affirmed with modification the decision of the RTC, decreeing in the dispositive portion, thus:

WHEREFORE, in view of all the foregoing, the appealed **Decision** of the Regional Trial Court, 11th Judicial Region, Br. 18, City of Digos, Province of Davao del Sur, finding Rosario Nasi-Villar guilty beyond reasonable doubt o the crime of Illegal Recruitment is **AFFIRMED** with **MODIFICATION** in that Rosario Nasi-Villar is **ORDERED** to pay Nila Panilag the sum of P10,000.00 as temperate damages.

SO ORDERED.^[10]

On 28 November 2006, the appellate court denied petitioner's motion for reconsideration.^[11]

Hence, petitioner filed the instant petition for review.

Petitioner alleges that the Court of Appeals erred in failing to consider that R.A. No. 8042 cannot be given retroactive effect and that the decision of the RTC constitutes a violation of the constitutional prohibition against *ex post facto* law. Since R.A. No. 8042 did not yet exist in January 1993 when the crime was allegedly committed, petitioner argues that law cannot be used as the basis of filing a criminal action for illegal recruitment. What was applicable in 1993 is the Labor Code, where under Art. 38, in relation to Art. 39, the violation of the Code is penalized with imprisonment of not less than four (4) years nor more than eight (8) years or a fine of not less than P20,000.00 and not more than P100,000.00 or both. On the other hand, Sec. 7(c) of R.A. No. 8042 penalizes illegal recruitment with a penalty of imprisonment of not less than six (6) years and one (1) day but not more than twelve (12) years and a fine not less than P200,000.00 nor more than