

## FIRST DIVISION

[ G.R. No. 168445, November 11, 2005 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. CAPT. FLORENCIO O. GASACAO, APPELLANT.**

### DECISION

**YNARES-SANTIAGO, J.:**

This is an appeal from the May 18, 2005 Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. CR No. 00800 dismissing the appeal of appellant, Florencio O. Gasacao and affirming the March 5, 2001 Joint Decision<sup>[2]</sup> of the Regional Trial Court (RTC) of Quezon City, Branch 218, finding appellant guilty beyond reasonable doubt of Large Scale Illegal Recruitment in Crim. Case No. Q-00-94240 and acquitting him of the charge in Crim. Case No. Q-00-94241.

The factual antecedents are as follows:

Appellant was the Crewing Manager of Great Eastern Shipping Agency Inc., a licensed local manning agency, while his nephew and co-accused, Jose Gasacao, was the President. As the crewing manager, appellant's duties included receiving job applications, interviewing the applicants and informing them of the agency's requirement of payment of performance or cash bond prior to deployment.

On August 4, 2000, appellant and Jose Gasacao were charged with Large Scale Illegal Recruitment defined under Section 6, paragraphs (a), (l) and (m) of Republic Act (RA) No. 8042 or the Migrant Workers and Overseas Filipinos Act of 1995, and penalized under Section 7 (b) of the same law, before the RTC of Quezon City.

The informations read:

In Criminal Case No. Q-00-94240

That sometime in the months of May to December, 1999 or thereabout, in Quezon City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and criminally recruit, enlist and promise overseas employment to the private complainants, namely, Lindy M. Villamor, Dennis Cabangahan, Erencio C. Alaba, Victorino U. Caderao, Rommel B. Patolen, Joseph A. Demetria and Louie A. Arca, as overseas seamen/seafarers, the said accused thereby charging, exacting and collecting from the said private complainants cash bonds and/or performance bonds in amounts ranging from P10,000.00 to P20,000.00 without any authority to do so and despite the fact that the same is prohibited by the POEA Rules and Regulations, which amount is greater

than that specified in the schedule of allowable fees prescribed by the Secretary of Labor and Employment, and despite the payment of the said fees, the said accused failed to actually deploy the private complainants without valid reasons as determined by the Department of Labor and Employment and despite the failure of deployment, the said accused failed to reimburse the expenses incurred by the said private complainants in connection with their documentation and processing for the purpose of their supposed deployment.

CONTRARY TO LAW.<sup>[3]</sup>

In Criminal Case No. Q-00-94241

That sometime in the months of September to November 1999 or thereabout, in Quezon City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and criminally recruit, enlist and promise overseas employment to the private complainants, namely, Melvin I. Yadao, Frederick Calambro and Andy Bandiola, as overseas seamen/seafarers, the said accused thereby charging, exacting and collecting from the said private complainants cash bonds and/or performance bonds in amounts ranging from P10,000.00 to P20,000.00 without any authority to do so and despite the fact that the same is prohibited by the POEA Rules and Regulations, which amount is greater than that specified in the schedule of allowable fees prescribed by the Secretary Labor and Employment, and despite the payment of said fees, the said accused failed to actually deploy the private complainants without valid reasons as determined by the Department of Labor and Employment and despite the failure of deployment, the said accused failed to reimburse the expenses incurred by the said private complainants in connection with their documentation and processing for the purpose of their supposed deployment.

SO ORDERED.<sup>[4]</sup>

Only the appellant was arrested while Jose Gasacao remained at large. When arraigned, appellant pleaded not guilty to the offense charged. Thereafter, trial on the merits ensued. On March 5, 2001, the RTC of Quezon City, Branch 218, rendered its Joint Decision convicting appellant of Large Scale Illegal Recruitment in Crim. Case No. Q-00-94240 and acquitting him of the charge in Crim. Case No. Q-00-94241. The dispositive portion of the joint decision reads:

WHEREFORE, judgment is hereby rendered as follows:

1. In Crim. Case No. Q-00-94240, the prosecution having established the guilt of the accused beyond reasonable doubt, the Court finds Florencio O. Gasacao GUILTY of Large Scale Illegal Recruitment punishable under Section 7, (b) of R.A. 8042. He is sentenced to suffer life imprisonment and a fine of P500,000.00. He shall also indemnify Dennis C. Cabangahan in the amount of P8,750.00; Lindy M. Villamor for P20,000.00; Victorino U. Cadera for P20,000.00;

Rommel B. Patolen for P20,000.00; and Erencio C. Alaba for P20,000.00. Complainants Louie A. Arca and Joseph A. Demetria did not testify.

2. In Crim. Case No. Q-00-94241, complainants Melvin I. Yadao, Frederick Calambro and Andy Bandiola did not testify. Moreover, the Court believes all these complainants should have been grouped in just one (1) information. Hence, for failure of the prosecution to prove the guilt of the accused beyond reasonable doubt, the Court finds Florencio O. Gasacao NOT GUILTY of the offense charged.

SO ORDERED.<sup>[5]</sup>

Conformably with our pronouncement in *People v. Mateo*,<sup>[6]</sup> which modified pertinent provisions of the Rules of Court insofar as they provide for direct appeals from the RTC to the Supreme Court in cases where the penalty imposed is death, *reclusion perpetua* or life imprisonment, as in this case, as well as this Court's Resolution dated September 19, 1995, we resolved on February 2, 2005 to transfer the case to the Court of Appeals for appropriate action and disposition.<sup>[7]</sup>

On May 18, 2005, the Court of Appeals promulgated the assailed Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the present appeal is hereby DISMISSED for lack of merit. The appealed Joint Decision dated March 5, 2001 of the trial court in Criminal Case No. Q-00-94240 is hereby AFFIRMED and UPHELD.

With costs against the accused-appellant.

SO ORDERED.<sup>[8]</sup>

Hence, this appeal.

The core issue for resolution is whether error attended the trial court's findings, as affirmed by the Court of Appeals, that appellant was guilty beyond reasonable doubt of the crime of large scale illegal recruitment.

RA No. 8042 defines illegal recruitment as follows:

## II. ILLEGAL RECRUITMENT

Sec. 6. DEFINITIONS. – For purposes of this Act, illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, procuring workers and includes referring, contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by a non-licensee or non-holder of authority contemplated under Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines: Provided, that such non-licensee or non-holder who, in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed so engaged. It shall likewise include the following acts,

whether committed by any persons, whether a non-licensee, non-holder, licensee or holder of authority.

(a) To charge or accept directly or indirectly any amount greater than the specified in the schedule of allowable fees prescribed by the Secretary of Labor and Employment, or to make a worker pay any amount greater than that actually received by him as a loan or advance;

....

(l) Failure to actually deploy without valid reason as determined by the Department of Labor and Employment; and

(m) Failure to reimburse expenses incurred by the workers in connection with his documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker's fault. Illegal recruitment when committed by a syndicate or in large scale shall be considered as offense involving economic sabotage.

Illegal recruitment is deemed committed by a syndicate carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

A license is a document issued by the Department of Labor and Employment (DOLE) authorizing a person or entity to operate a private employment agency, while an authority is a document issued by the DOLE authorizing a person or association to engage in recruitment and placement activities as a private recruitment entity. However, it appears that even licensees or holders of authority can be held liable for illegal recruitment should they commit any of the above-enumerated acts.

Thus, it is inconsequential that appellant committed large scale illegal recruitment while Great Eastern Shipping Agency, Inc. was holding a valid authority. We thus find that the court below committed no reversible error in not appreciating that the manning agency was a holder of a valid authority when appellant recruited the private complainants.

There is no merit in appellant's contention that he could not be held liable for illegal recruitment since he was a mere employee of the manning agency, pursuant to Section 6 of RA No. 8042 which provides:

The persons criminally liable for the above offenses are the principals, accomplices and accessories. In case of juridical persons, the officers having control, management or direction of their business shall be liable.

Contrary to appellant's claim, he is not a mere employee of the manning agency but the crewing manager. As such, he receives job applications, interviews applicants and informs them of the agency's requirement of payment of performance or cash bond prior to the applicant's deployment. As the crewing manager, he was at the forefront of the company's recruitment activities.

Private complainant Lindy Villamor testified that it was appellant who informed him that if he will give a cash bond of P20,000.00, he will be included in the first batch