

## FIRST DIVISION

[ G.R. No. 128112, May 12, 2000 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
DIOSCORO MERCADO DE ARABIA AND FRANCISCA LITTAUA  
TOMAS, ACCUSED-APPELLANTS.**

### D E C I S I O N

**KAPUNAN, J.:**

This is an appeal from the Decision<sup>[1]</sup> dated August 30, 1995, of the Regional Trial Court of Quezon City, Branch 93 in Criminal Case No. Q-93-43368 finding accused-appellants Dioscora Mercado de Arabia (Mercado, for brevity) and Francisca Littaua Tomas (Tomas, for brevity) guilty beyond reasonable doubt of the crime of Illegal Recruitment in Large Scale in violation of Article 38 (b) in relation to Article 39 of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines, the dispositive portion of which reads:

Wherefore, in view of the foregoing considerations, and in the light of the above-quoted decision of the Supreme Court, this Court finds the evidence submitted by the prosecution to be substantial to prove his guilt of the accused beyond reasonable doubt and with moral certainty and in view thereof finds both accused guilty beyond reasonable doubt of Violation of Article 38, paragraph (b) in relation to Article 39 of Presidential Decree No. 442 and pursuant to the said law, sentences both accused to suffer the penalty of life imprisonment in case of insolvency and to indemnify the complainants Lourdes Pastor in the amount of P17,500.00; Romeo Pastor in the amount of P17,500.00; Imelda Corre in the amount of P10,000.00; Cristina Arellano in the amount of P12,000.00 and Lilibeth Mabalot in the amount of P7,000.00 and the pay the costs.

SO ORDERED.<sup>[2]</sup>

Accused-appellants Mercado and Tomas were charged with the crime of Illegal Recruitment in Large Scale pursuant to Article 38 (b) in relation to Article 39 (a) of the Labor Code, as amended by Presidential Decree No. 2018. The Information against them stated:

That on or about the period comprised from November 3, 1992 to December 12, 1992, in Quezon City, Philippines, the above-named accused, conspiring together, confederating with and mutually helping each other, without any authority of law and for a fee, did, then and there wilfully, unlawfully and feloniously recruit and promise employment/job placement abroad to the following persons: CRISTINA ARELLANO, LOURDES PASTOR, ROMEO PASTOR, IMELDA O. CORRE feloniously recruit and promise employment/job placement abroad to the

following persons: CRISTINA ARELLANO, LOURDES PASTOR, ROMEO PASTOR, IMELDA O.CORRE and LILIBETH O. MABALOT, without first securing the required license or authority from the Department of Labor and Employment, in violation of the aforesaid law.

That the crime described above is committed in large scale as the same was perpetrated against three or more persons individually or as a group as penalized under Art. 38(a) and 39(b) as amended by PD 2018 of the Labor Code of the Philippines. (PD 442)

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

Upon arraignment, both Mercado and Tomas pleaded Not Guilty to the offense.

The prosecution presented the testimony of five complainants, namely: Lourdes Pastor, Romeo Pastor, Imelda Corre, Lilibeth Mabalot and Cristina Arellano, and one corroborating witness, Antonia Reodique. The testimony of complainant Cristina Arellano was, however, expunged from the records due to her failure to take the witness stand for cross-examination.<sup>[4]</sup>

Complainant Lourdes Pastor (Lourdes, for brevity), testified that sometime during the last week of November 1992, she and her brother Romeo Pastor and another companion went to a house in Villa Nova Subdivision, Novaliches, Quezon City to visit a fortune teller. The fortune teller introduced herself as Dioscora Mercado de Arabia. While Lourdes and Romeo were in Mercado's residence, they noticed a passport with money inserted in it. When they inquired from Mercado what the passport and money were for, she replied that she is capable of sending persons abroad for employment.<sup>[5]</sup> She assured Lourdes and Romeo that if they will be able to give her their passport and placement fee in the amount of P17,500.00 each, she could facilitate their employment and departure for Taiwan by January 1993. Mercado added that they would be working as factory workers in Taiwan with a monthly salary of P25,000.00. Lourdes discussed the prospective job in Taiwan with Mercado in the latter's residence about four times during the period between the last week of November and first week of December 1992. On December 8, 1992, Lourdes gave her passport and placement fee in the amount of P17,500.00 to Mercado in the presence of co-accused Tomas.<sup>[6]</sup> When Lourdes asked for a receipt, Mercado told her that she could not be issued one because she was being hired on a direct basis.<sup>[7]</sup> On January 16, 1993, however, Lourdes was unable to leave for Taiwan as promised by Mercado. When she went to the latter's house to inquire as to the reason for her failure to leave for Taiwan, Mercado explained that January 16 was a holiday in Taiwan. After January 16, 1993, Mercado kept on promising that Lourdes and the other applicants would leave soon.<sup>[8]</sup>

On February 4, 1993, Mercado called Lourdes at home and asked the latter to come to her house. Upon arriving at Mercado's residence in Villa Nova Subdivision, Lourdes and the other applicants who were then present were informed by Mercado that they would all be going to the office of the National Bureau of Investigation (NBI, for brevity) to cause the surveillance of a certain Rebecca Sipagan. Although Lourdes did not know and had never met Sipagan, she went with Mercado and about twenty other applicants to the NBI.<sup>[9]</sup>

At the NBI office, Lourdes and the other applicants waited for Mercado while the latter talked to a lawyer-investigator in a separate room. Thereafter, Mercado, who was holding a blank affidavit form, went to the room where they were waiting and told them that they were going to Malacañang to sign some papers. However, instead of proceeding to Malacañang, they went to a house under the Nagtahan bridge, which house was owned by a certain Sgt. Bass.<sup>[10]</sup> Inside the said house, Mercado distributed copies of the blank affidavit form to Lourdes and the other applicants and dictated to them what to write in the blanks.<sup>[11]</sup>

In accordance with Mercado's instructions, Lourdes wrote the name of Rebecca Sipagan as respondent in the affidavit form and alleged therein that she gave Sipagan P30,000.00 as placement fee.<sup>[12]</sup> On direct examination, however, Lourdes testified that she does not know Rebecca Sipagan and that she only executed the affidavit following Mercado's instructions. Lourdes clarified that she had no intention of filing a complaint against Sipagan because she never met the latter and could not have possibly given money to her.<sup>[13]</sup>

Lourdes further testified that subsequently, she went back to the NBI to explain that she wanted to file a complaint not against Rebecca Sipagan but against Dioscora Mercado, since the latter was the person who recruited her. After talking to a certain Atty. Arugay of the NBI, Lourdes executed another affidavit, this time alleging that it was Dioscora Mercado who recruited her and who received her passport and placement fee but who failed to send her to Taiwan for employment.<sup>[14]</sup>

When asked about Tomas' participation in Mercado's recruitment activities, Lourdes replied that Tomas was always present during her meetings with Mercado, but it was Mercado who received her money.<sup>[15]</sup>

Lourdes' brother and co-complainant Romeo Pastor (Romeo, for brevity) testified that he met accused Mercado and Tomas for the first time during the first week of November 1992 when he went to Mercado's house in Villa Nova Subdivision, Novaliches, Quezon City together with his sister Lourdes Pastor. On that day, he saw that there were several other persons in Mercado's house. When he inquired from Mercado what these people were doing in her house, she informed him that they were applicants who were about to leave the country for employment as factory workers in Taiwan.<sup>[16]</sup> Mercado told him that if he was interested to work as a factory worker earning a monthly salary of P25,000.00, he could leave for Taiwan together with the second batch in December 1992 upon submission of his passport and payment of a placement fee in the amount of P17,500.00.<sup>[17]</sup> On December 9, 1992, Romeo submitted his documents and passport together with his placement fee of P17,500.00 to Mercado and Tomas. When he asked for a receipt, Mercado told him that since he was being hired on a direct basis, it was no longer needed.<sup>[18]</sup> When he failed to leave for Taiwan in December as promised by Mercado, he talked to her and she guaranteed that he could leave by January 16, 1993. His departure for Taiwan in January 16 was postponed again because according to Mercado, the said date was a holiday in that country.<sup>[19]</sup>

On February 3, 1993, Mercado called him up and asked him to go to her house the following day, February 4, 1993. When Romeo went to Mercado's house in February

4, he saw that there were many other applicants waiting there. Later, he was told that they would be proceeding to the NBI to cause the surveillance of one Rebecca de Jesus Sipagan. Romeo testified that he did not know anyone by that name. Still, he went with Mercado and some twenty other applicants. When they were at the NBI, he and the other applicants waited together in one area while Mercado talked for a long time to an NBI investigator inside another room. Later, Mercado went out of the room and asked them who would speak on behalf of the applicants. When Romeo was asked by Mercado if he wanted to be their spokesperson, he declined. Thereafter, about five persons, including Mercado and his sister Lourdes, entered the investigation room. They were able to get copies of an affidavit form. Subsequently, Mercado told him and the other applicants that they were going to Malacañang to accomplish the affidavit forms. However, Romeo and the other applicants were brought to an apartment under the Nagtahan Bridge instead.<sup>[20]</sup>

While they were in said apartment, Mercado instructed them to fill in the affidavit forms, and to allege therein that Rebecca Sipagan promised to send them to Taiwan and to return their money. After Romeo accomplished the affidavit form given to him, he gave the same to Mercado.<sup>[21]</sup> During his direct and cross-examinations, however, Romeo explained that he filed an affidavit-complaint against Sipagan only because that was what Mercado wanted and he was promised by her that his money would be returned to him if he filed a complaint against Sipagan.<sup>[22]</sup>

However, since his money was still not returned after he accomplished said affidavit and gave the same to Mercado, Romeo, his sister Lourdes and another complainant, Lilibeth O. Mabalot, went to a police station in Valenzuela, Metro Manila to file a complaint against Mercado and Tomas. They were advised by the Valenzuela police to return to the NBI and file a complaint against the persons responsible for their recruitment. Thus, Romeo, Lourdes and Lilibeth Mabalot explained to an NBI investigator the circumstances surrounding the execution of their respective affidavits against Sipagan. Thereafter, they executed separate affidavits alleging that Mercado and Tomas recruited them for employment as factory workers in Taiwan and took their money.

Another complainant, Imelda Corre, (Imelda, for brevity) testified that sometime in 1991, she met Mercado and Tomas at their residence in Novaliches, Quezon City. They talked about Mercado being a manghihilot and a fortune teller. Imelda's sister also learned that Mercado had the capacity to send workers abroad. In October 1992, Imelda went to Mercado's house to inquire about the possibility of working in Taiwan. When she arrived in said residence, she noticed that there were about ten persons waiting to submit their respective passports to Mercado. Mercado told Imelda that she could facilitate her employment abroad as a factory worker earning P25,000.00 monthly, but she had to submit her passport so that her departure for Taiwan would be processed. Mercado also asked her to give P10,000.00 as placement fee.<sup>[23]</sup>

On November 3, 1992, Imelda went back to Mercado's residence to give her passport, other requirements and the P10,000.00 placement fee. Mercado received these from Imelda in the presence of Tomas. When Imelda asked for a receipt, Mercado told her that it was no longer necessary because she was being hired on a direct basis. Mercado also told her that she would leave for Taiwan on January 16, 1993.<sup>[24]</sup> However, Imelda was unable to depart for Taiwan on said date. When

she confronted Mercado about this, she was told that the trip had to be postponed for February as it turned out that January 16, 1993 was a holiday in Taiwan. Like the other complainants, Imelda was still unable to leave for Taiwan thereafter, despite Mercado's promises.<sup>[25]</sup>

Imelda further testified that on February 4, 1993, Tomas called her up and asked her to proceed to Mercado's residence. Tomas explained that they were going to cause the surveillance of a certain Rebecca de Jesus, whom Imelda had never seen nor heard of. Eager to recover her money, Imelda went to the NBI on February 5, 1993 and joined Mercado and the other applicants, including Romeo, Lourdes, Lilibeth Mabalot and Cristina Arellano. At the NBI, Mercado, her husband and some of Mercado's friends entered a room. Imelda and the other applicants waited outside. After about forty-five minutes, Mercado went out of the room and called Lourdes. After another fifteen minutes, Mercado called Imelda and asked her to sign a piece of paper which she likened to an attendance sheet. After signing the paper, Mercado went inside the room again. Thereafter, Mercado went out of the room again and told Imelda to go home already. Instead of going home, Imelda proceeded together with some twenty other applicants to a house in Nagtahan.<sup>[26]</sup>

While they were at the house in Nagtahan, Imelda and the other applicants were given one affidavit form each which they filled in with the information which Mercado dictated to them. Mercado also asked Imelda and the others to sign their respective affidavits. When Imelda inquired why they had to sign the affidavit, Mercado explained that it was the only way by which they could get back their money. After signing the affidavit, Imelda gave the same to Mercado. Imelda was not given a copy thereof. Thereafter, Mercado told her that she could go home and that the former would just get in touch with her. She was not present when the said document was notarized.<sup>[27]</sup>

Subsequently, Mercado called up Imelda and asked her if she wanted to apply for overseas employment with another agency. Sometime in February, Mercado again urged Imelda to apply for employment with another agency, and said that if Imelda could leave the country through another employment agency, she could still have the opportunity to earn what she had spent earlier.<sup>[28]</sup>

Imelda grew even more suspicious of Mercado. Thus, together with her fellow applicants Cristina Arellano and Lilibeth Mabalot, she went to the Philippine Overseas Employment Authority (POEA, for brevity) and inquired whether Mercado and Tomas were licensed recruiters. They discovered that the two were not licensed to recruit applicants for employment.<sup>[29]</sup>

On March 3, 1993, Imelda, Romeo, Lourdes, Cristina Arellano and Lilibeth Mabalot returned to the NBI to follow up the status of the complaints against Rebecca Sipagan, for which they executed affidavits earlier on February 5, 1993. They told the NBI agents that they actually did not know Rebecca Sipagan. Imelda related everything that transpired relative to her application and the money which she gave to Mercado. Thereafter, she accomplished another affidavit before NBI administering officer Britanico which she subscribed before Assistant City Prosecutor Arturo delos Reyes. In said affidavit, Imelda stated that it was Mercado and Tomas who committed illegal recruitment and estafa against her as well as against her fellow applicants Lourdes, Romeo, Lilibeth Mabalot and Cristina Arellano.<sup>[30]</sup>