

## FIRST DIVISION

[ G.R. No. 122508, June 26, 1998 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELVIS SANCHEZ, ACCUSED-APPELLANT.**

### DECISION

**VITUG, J.:**

This appeal assails the 24th July 1995 decision<sup>[1]</sup> of the Regional Trial Court of Baguio City, Branch 6, finding appellant Elvis Sanchez guilty beyond reasonable doubt of the crimes of illegal recruitment in large scale (Criminal Case No. 12357-R) and three (3) counts of estafa (Criminal Cases No. 12359-R, No. 12360-R and No. 12362-R) and sentencing him accordingly.

Appellant was charged, on 25 November 1993, with violation of Article 38(b) of Presidential Decree No. 442 (Labor Code), as amended, for illegal recruitment in large scale. The information averred -

"That during the period from the month of November, 1992, to March 8, 1993, in the City of Baguio, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, representing himself to have the capacity to contract, enlist and hire and transport Filipino workers for employment abroad, did then and there willfully, unlawfully and feloniously for a fee, recruit and promise employment/job placement to the following persons:

- "1. Alice G. Kimay
- "2. Veronica Filog
- "3. Aaron John Acena
- "4. Nancy Fesset
- "5. Jerry Akia

"without first securing or obtaining license or authority from the proper government agency."<sup>[2]</sup>

Likewise filed against appellant on the same day (25 November 1993) were the corresponding five cases of estafa. Except for the names of the complainants and the amounts involved, the informations substantially contained like allegations to the effect -

"That on or about the 8th day of March, 1993, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously defraud one JERRY AKIA by way of false pretenses, which are executed prior to or simultaneously with the commission of the fraud, as follows, to wit: the accused knowing fully well that he/she/they is/are not authorized job recruiters for persons intending to secure work abroad

convinced said JERRY AKIA and pretended that he/she/they could secure a job for him/her abroad, for and in consideration of the sum of P15,000.00 when in truth and in fact they could not; the said JERRY AKIA deceived and convinced by the false pretenses employed by the accused parted away the total sum of P15,000 in favor of the accused, to the damage and prejudice of the said JERRY AKIA in the aforementioned amount of FIFTEEN THOUSAND PESOS, (P15,000.00), Philippine Currency.”<sup>[3]</sup>

The accused in all the charges brought up against him pleaded not guilty when arraigned. Since the cases involved a common factual background, a joint trial was conducted. Pending trial and before they could be put to the witness stand, Nancy Fesset and Veronica Filog, who were among those who filed Criminal Case No. 12357-R and the complainants in, respectively, Criminal Case No. 12358-R and Criminal Case No. 12361-R, left for abroad.

Alice Kimay, the 54-year-old complainant in Criminal Case No. 12357-R and Criminal Case No. 12360-R, used to be an elementary school teacher in Kalinga, Apayao. She left for Italy in 1985 to work as a baby-sitter and there stayed until 1990 when she returned to the Philippines. In November 1992, she learned from a certain Estela that a recruiter, named Elvis Sanchez, was in town recruiting workers for Taiwan. Alice passed on the information to her “nephews and nieces,” her co-complainants in Criminal Case No. 12357-R, namely, Aaron John Acena, Jerry Akia, Veronica Filog and Nancy Fesset. Being all interested in gaining employment abroad, the group went to see appellant at the Leisure Lodge in Magsaysay Avenue, Baguio City, where he was billeted. Appellant assured complainants that he could secure jobs for them abroad if they would each pay a placement fee and submit pertinent papers, like their bio-data, NBI clearances, medical certificates and passports, required for foreign travel. The applicants requested appellant to instead secure for them the passports upon their submission of NBI clearances and medical certificates.

Alice, who had applied for a domestic helper job in Taiwan, was able to deliver to appellant the required papers. Alice paid the placement fee of sixteen thousand pesos (P16,000.00) to appellant in two (2) installments evidenced by two (2) receipts. The first receipt,<sup>[4]</sup> dated 09 November 1992, was for the amount of five thousand pesos (P5,000.00) and the second receipt,<sup>[5]</sup> dated 17 January 1993, was for eleven thousand pesos (P11,000.00). The receipts were both issued in Makati, Metro Manila. Appellant assured Alice that she would be able to leave by December 1992. Seeing that appellant had reneged on his promise to send her to Taiwan, Alice went to see him in his residence at Pateros, Metro Manila, where he merely gave another promise. Tired of appellant’s failed assurances, Alice and the other complainants ultimately went to the Philippine Overseas Employment Administration (“POEA”) office in Magsaysay Avenue, Baguio City, where they were to learn that appellant was not a licensed recruiter. The complainants executed a joint affidavit<sup>[6]</sup> subscribed and sworn to by Atty. Justinian O. Licnahan before whom the corresponding criminal charges against appellant were submitted.

Jerry Akia, 28-year-old complainant in Criminal Case No. 12357-R and Criminal Case No. 12359-R, corroborated the testimony of Alice Kimay. Like the rest of the group, he also met with appellant at the Leisure Lodge in Baguio City. Along with his application for an electrician job in Saudi Arabia, he handed over to appellant five thousand pesos (P5,000.00) in partial payment of the required placement fee. Jerry

later paid the balance of ten thousand pesos (P10,000.00) in appellant's office in Guadalupe, Makati, Metro Manila. The receipt for the first payment was turned over to him only on 02 January 1993.<sup>[7]</sup> The receipt for the second installment was unfortunately lost by his father. Appellant did not live up to his promise to send Jerry abroad despite his submission of all required documents.

Aaron John Acena, 24-year-old complainant in Criminal Case No. 12357-R and Criminal Case No. 12362-R, came to know appellant, through Alice Kimay. He too went to see appellant at the Leisure Lodge in Magsaysay Avenue, Baguio City. The placement fee in his case was pegged at eighteen thousand pesos (P18,000.00). On 08 January 1993, Aaron went with Alice to see appellant in his office in Guadalupe, Makati, where he paid the amount of eighteen thousand one hundred seventy pesos (P18,170.00).<sup>[8]</sup> Aaron was thereupon told by appellant to follow up his flight booking with the Philippine Airlines. Aaron, indeed, was twice booked with the airline company, the first on 11 January 1993 and the second on 14 January 1993 but that was just about all. His departure for abroad never materialized. In the meantime, Aaron stayed with appellant in Pateros until March 1993. After a long wait and numerous follow-ups, Aaron decided to return to Baguio City. Ultimately, Aaron, along with the other complainants went to the POEA office in Baguio City and filed their complaint against appellant. After his arrest, appellant, his wife and his brother talked with Aaron about possibly settling the case.

The prosecution submitted a certification,<sup>[9]</sup> dated 22 November 1993, issued by Jose D. Matias, Attorney II, of the POEA Regional Extension Unit in Baguio City, to the effect that "ELVIS SANCHEZ per existing and available records from (the) Office is not licensed nor authorized to recruit workers for overseas employment in the City of Baguio or any part of the Region." Matias attested in open court to the veracity of the certification.

Testifying in his defense, appellant denied having tried to recruit complainants for overseas employment. He asserted that he was not in Baguio City, let alone billeted in Leisure Lodge, during the period from October to December 1992. He said that his mother, Eutropia Sanchez, was at the time confined at the Philippine Heart Center whom he had to visit daily. He did meet complainants Alice Kimay, Jerry Akia and Aaron John Acena some time in September or October 1992 when they requested him to allow them to stay overnight at his house in Hermoso, Pateros, Metro Manila. After that, appellant saw complainants only during the interment of his mother. To help establish his claim that he was not billeted at the Leisure Lodge during the last quarter of 1992, appellant presented Caroline Castillo, hotel operations manager of Prime Hotel, who submitted to the court the hotel registry book for the period of October to December 1992.<sup>[10]</sup> Caroline was connected with Leisure Lodge from 1986 up to May 1992 after which she was transferred to the Prime Hotel even while maintaining her position as an overall supervisor in Leisure Lodge that required her to periodically check on the front desk clerk and the supervisor.

Assessing the evidence, the trial court found appellant guilty beyond reasonable doubt of illegal recruitment in large scale and of three counts of estafa. It adjudged:

"Wherefore, judgment is rendered as follows:

"1. In Crim. Case No. 12357-R, the Court Finds the accused Elvis Sanchez guilty beyond reasonable doubt of the crime of

Illegal Recruitment in a large scale as defined and penalized under Article 38 (b) in relation to Article 39 of PD 442 as amended by PD 2018 and sentences him to Life Imprisonment and to pay a Fine of P100,000 and to pay the costs.

"2. In Crim. Case Nos. 12359-R, 12360-R and 12362-R (3 counts) the Court Finds accused Elvis Sanchez guilty beyond reasonable doubt of the crime of Estafa as charged in each of the Informations in the aforesaid 3 cases as defined and penalized under Article 315 first paragraph in relation to No. 2 (a) of the same article and sentences him, applying the Indeterminate Sentence Law, to an imprisonment ranging from six (6) months and one (1) day of prision correccional as Minimum to six (6) years, eight (8) months and twenty (20) days of Prision Mayor as Maximum in each of the aforesaid 3 cases; to indemnify the offended parties, Jerry Akia the sum of P15,000 in Crim. Case 12359-R; Alice Kimay the sum of P16,000 in Crim. Case No. 12360-R and Aaron John Acena the sum of P18,170.00 in Crim. Case No. 12362-R as actual damages without subsidiary imprisonment in case of insolvency and to pay the costs.

"The accused Elvis Sanchez being a detention prisoner is entitled to be credited 4/5 of his preventive imprisonment in the service of his sentence in accordance with Article 29 of the Revised Penal Code.

"3. In Crim. Case No. 12358-R (Nancy Fesset, complainant) and Crim. Case No. 12361-R (Veronica Filog, complainant), the prosecution having failed to prove his guilt beyond reasonable doubt, the Court hereby acquits Elvis Sanchez of the offense of estafa charged in said Informations. Cost de oficio.

"The City Jail Warden is directed to release accused in so far as Crim. Case No. 12358-R and 12361-R only unless held for other cases.

"SO ORDERED."<sup>[11]</sup>

The Court finds no merit in the instant appeal.

Appellant argues that the trial court did not acquire territorial jurisdiction over the criminal cases since he has been able to convincingly prove his having been in Manila, not in Baguio City, at the time of the alleged commission of the offenses charged against him. He brands the testimony given by the prosecution witnesses as being inconsistent, "poorly chorused and inadequately coached" and rues the fact that the trial court has merely considered the "inconsistencies" to be mere "lapses in memory and minor discrepancies." This invocation is indeed one fine way of putting up, in reality, the defense of *alibi* for, in this so-called issue of "territorial jurisdiction over the cases," appellant actually is saying that he could not have met the complainants in Baguio City for the latter's possible deployment abroad because it would not be possible for him to be in two places at the same time.