

SECOND DIVISION

[CA-G.R. CR-HC NO. 05632, March 23, 2015]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
REXZHELLE SERIOZA, ACCUSED-APPELLANT.**

DECISION

CRUZ, R.A., J.:

THE CASE

This is an appeal from the Decision dated November 23, 2011^[1] rendered by the Regional Trial Court ("RTC") of Pasay City, Branch 111, in Criminal Cases Nos. 09-0036-CFM to 09-0043-CFM and R-PSY-08-07987-CR, the dispositive portion of which reads, as follows:

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"WHEREFORE, the Court finds accused Rexzhelle Serioza **guilty** beyond reasonable doubt of **illegal recruitment in large scale in Criminal Case No. 09-0036** and, accordingly, sentences her to suffer the penalty of life imprisonment and to pay a fine of P500,000.00.

In **Criminal Case No. R-PSY-09-0037**, accused is also found guilty beyond reasonable doubt of the crime of **estafa** and sentenced to suffer the indeterminate penalty of imprisonment ranging from two (2) years and one (1) day of prision correccional as minimum, to eight (8) years of prision mayor, as maximum, and to indemnify Wilson V. Flores the sum of P41,620.00 as actual damages plus 12% interest per annum reckoned from judicial demand on 19 February 2009 until fully paid.

In **Criminal Case No. R-PSY-09-0038**, accused is also found guilty beyond reasonable doubt of the crime of **estafa** and sentenced to suffer the indeterminate penalty of imprisonment ranging from one (1) year and one (1) day of prision correccional, as minimum, to eight (8) years of prision mayor, as maximum, and to indemnify Robert Pamittan the sum of P35,000.00 as actual damages plus 12% interest per annum reckoned from judicial demand on 19 February 2009 until fully paid.

In **Criminal Case No. R-PSY-09-0040**, accused is also found guilty beyond reasonable doubt of the crime of **estafa** and sentenced to suffer the indeterminate penalty of imprisonment ranging from two (2) years and one (1) day of prision correccional, as minimum, to eight (8) years of prision mayor, as maximum, and to indemnify Rizalino O. Benemerito the sum of P40,000.00 as actual damages plus 12% interest per annum reckoned from judicial demand on 19 February 2009 until fully paid.

In **Criminal Case No. R-PSY-09-0042**, accused is also found guilty beyond reasonable doubt of the crime of **estafa** and sentenced to suffer the indeterminate penalty of imprisonment ranging from two (2) years and one (1) day of prision correccional, as minimum, to ten (10) years of prision mayor, as maximum, and to indemnify Arnold Malaluan the sum of P55,000.00 as actual damages plus 12% interest per annum reckoned from judicial demand on 19 February 2009 until fully paid.

For failure of the prosecution to present evidence in **Criminal Case No. 08-07987** and **Criminal Cases Nos. R-PSY-09-0039, 09-0041 and 09-0043**, accused Rexzhelle Serioza is **ACQUITTED** of the other four (4) counts of estafa.

SO ORDERED."

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THE ANTECEDENTS

Rexzhelle Serioza stands charged before the RTC of Pasay City, Branch 111 with the crime of Illegal Recruitment in Large Scale, docketed as Criminal Case No. 09-0036, through an Information which reads, as follows:

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"That sometime in the months covering from March 2007, to September 2007, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by falsely representing herself to have the capacity to contract, enlist, employ and recruit workers for employment abroad, did then and there willfully, unlawfully, feloniously for a fee, recruit and promise job placement abroad to complainants Wilfredo. V. Flores, Wilson V. Flores, Ivy G. Balading, Rizalino O. Benemerito, Jr., Renato L. Corpuz, Robert M. Pamittan and Arnold Malaluan, without first securing the required license or authority from the Philippine Overseas and Employment Administration.

Contrary to law."^[2]

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The accused was also charged with eight (8) counts of Estafa under Article 315 paragraph 2 (a) of the Revised Penal Code^[3], through similarly worded Information, except for the names of the private complainants and the corresponding amounts involved, to wit:

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Criminal Case No. 08-07987-CR

"That on or about sometime in the month of July 2007, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable

Court, the above-named accused, defrauded complainant Edgar Encarnacion, in the following manner to wit: that said accused with intent to defraud and thru false representation[s] she [sic] made to the complainant that she have [sic] the capacity to secure employment abroad for said complainant and to facilitate his working and travel papers, did then and there willfully, unlawfully and feloniously ask and demand the amount of P40,000.00, from complainant allegedly to be used to facilitate complainant's travel papers and other documents, well knowing that said representation[s] is [sic] false and were only made a ploy to induce and convince complainant to give the said amount and the latter carried away by said misrepresentation[s] had [sic] in fact gave and delivered to said accused the amount of P40,000.00 but failed to secure the travel documents and to deploy complainant abroad, to the damage and prejudice of said complainant in the aforesaid amount of P40,000.00.

Contrary to law.” [4]

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The other private complainants were: (1) Wilson Flores involving the amount of P48,620.00 in Criminal Case No. 09-0037-CFM^[5]; (2) Robert Pamittan involving the amount of P35,000.00 in Criminal Case No. 09-0038-CFM^[6]; (3) Renato Corpuz involving the amount of P40,000.00 in Criminal Case No. 09-0039-CFM^[7]; (4) Rizalino Benemerito, Jr. involving the amount of P40,000.00 in Criminal Case No. 09-0040-CFM^[8]; (5) Wilfredo Flores involving the amount of P40,000.00 in Criminal Case No. 09-0041-CFM^[9]; (6) Arnold Malaluan involving the amount of P55,000.00 in Criminal Case No. 09-0042-CFM;^[10] (7) Ivy Balading involving the amount of P65,000.00 in Criminal Case No. 09-0043-CFM^[11].

After finding probable cause, the RTC issued an Order of Arrest against the accused on February 19, 2009^[12]. When arraigned, Accused Rexzhelle Serioza entered a plea of "not guilty" in all the above-stated Information.^[13] During the pre-trial of these cases, the parties stipulated on the identity of the accused as the person charged in the Information.^[14] After pre-trial was terminated, trial of the case ensued.

From the evidence adduced by the prosecution, it appears that from July 2007 to September 2007, Arnold Malaluan, Robert Pamittan, Rizalino Benemerito, Jr. and Wilson Flores, individually and separately met and talked to the accused at her office at R.A.M. Travel and Tours located at Airman's Village, Villamor Air Base, Pasay City. They inquired as to possible job opportunities abroad. Accused promised to deploy them either as airport security guards or salesmen to Dubai for and in consideration of P80,000.00 placement fee. Convinced of the accused's capacity to deploy workers abroad, Arnold Malaluan, Robert Pamittan, Rizalino Benemerito, Jr. and Wilson Flores complied with the supposed requirements and partially paid the required fees. However, the accused failed to send them abroad as promised. They later learned that the accused was arrested in an entrapment operation conducted by the National Bureau of Investigation ("NBI").

The prosecution presented five (5) witnesses, namely: (1) Arnold Malaluan; (2) Robert Pamittan; (3) Rizalino Benemerito; (4) Wilson Flores and; (5) Marcelino Maningding, Jr. in order to secure the conviction of the accused.

Arnold Malaluan, the private complainant in Criminal Case No. 09-0042-CFM, testified that accused's spouse was his classmate in military training^[15]. Sometime in July 2007, he inquired from R.A.M. Travel and Tours located at Airman's Village, Villamor Air Base, Pasay City if there are employment opportunities available abroad^[16]. Accused promised that she can get him employed as a security guard in Dubai with a monthly salary of P80,000.00 given his background as a military personnel^[17]. Accused charged him with a placement fee in the amount of P70,000.00, Philippine Currency.^[18] He paid the total amount of P55,000.00, Philippine Currency to the accused as evidenced by OR No. 0401 dated September 19, 2007 and OR No. 0402 dated September 24, 2007^[19]. He was made to believe that his application for employment abroad was being processed. He followed-up at her house but he could no longer find her. After, he learned of the entrapment operation conducted by the NBI against the accused and her arrest, he filed a complaint against the latter.

Robert Pamittan, the private complainant in Criminal Case No. 09-0038-CFM, testified that accused was his wife's client in her computer business^[20]. He met the accused at a Jollibee branch in Pasay City where he was promised by the accused with an employment opportunity first as waiter and second as computer salesman in Dubai.^[21] He paid the total amount of P35,000.00, Philippine Currency to the accused as evidenced by OR Nos. 0054, 0057, 0058 dated June 5, 2007, June 8, 2007 and June 13, 2007 respectively^[22]. He underwent medical examination as instructed but the accused failed to deploy him for work abroad.

Rizalino Benemerito, the private complainant in Criminal Case No. 09-0040-CFM, testified that he was promised employment as airport security guard in Dubai by the accused^[23] for which he paid a down payment in the amount of P40,000.00, Philippine Currency as evidenced by OR Nos. 0032, 0033, 0034, 0035 dated August 2, 2007, August 10, 2007, August 11, 2007 and August 12, 2007 respectively^[24].

Wilson Flores, the private complainant in Criminal Case No. 09-0037-CFM, testified that sometime in July 2007, he went to the house of the accused at Pasay City to apply for a job. He was promised employment as airport security guard in Dubai with a monthly salary of P60,000.00-80,000.00, Philippine Currency by the accused^[25]. Accused charged him with a fee in the amount of P80,000.00, Philippine Currency^[26]. He paid a down payment in the amount of P41,620.00 as evidenced by OR Nos. 0060, 0025, 0067, 0028, 0073 dated July 2, 2007, July 9, 2007, July 16, 2007, July 19, 2007 and August 22, 2007 respectively^[27]. When the accused informed him that his visa will soon be released he quit his job. However, the accused failed to send him for work abroad.

Marcelino Maningding, Jr. is a Senior Labor Employment Officer of the POEA. His testimony pertains to the Certification dated July 23, 2009^[28] issued by POEA stating that Rexzhelle Serioza is neither licensed nor authorized to recruit workers for overseas employment^[29].

After the prosecution's documentary evidence were admitted by the RTC^[30], the defense presented the testimony of Accused Rexzhelle Serioza who made a different portrayal of the events.

The accused explained that she has no license from the POEA because R.A.M Travel and Tours is only engaged in tourist assistance for which she holds a registration^[31] and broker's certificate^[32] from the Department of Trade and Industry ("DTI")^[33]. In her testimony, she insisted that she only assisted the private complainants in securing a tourist/visit visa as evidenced by the following documents: (1) Affidavit of Rizalino Benemerito dated August 12, 2007 stating that he applied for a tourist/visit visa at R.A.M Travel and Tours^[34]; (2) Kasunduan executed by Rizalino Benemerito stating that the P80,000.00, Philippine Currency fee constitutes payment for two (2) months Dubai visit visa, two (2) months board, lodging and food^[35]; (3) Kasunduan executed by Wilson Flores stating that the P80,000.00, Philippine Currency fee constitutes payment for two (2) months Dubai visit visa, two (2) months board, lodging and food^[36]; (4) Kasunduan executed by Wilfredo Flores stating that the P80,000.00, Philippine Currency fee constitutes payment for two (2) months Dubai visit visa, two (2) months board, lodging and food^[37]; (5) Kasunduan executed by Renato Corpuz stating that the P80,000.00, Philippine Currency fee constitutes payment for two (2) months Dubai visit visa, two (2) months board, lodging and food^[38]; (6) Receipts^[39] issued to Wilson Flores stating that the payment is for the application of a tourist/visit visa. Accused claimed that she was not able to release the visa for failure of the private complainants to pay their outstanding balance. She alleged that the original documents (visa) are in the possession of R.A.M Travel and Tours' partner agency in Dubai.

On November 23, 2011, the RTC issued its Decision finding Accused Rexzhelle Serioza guilty beyond reasonable doubt of the crimes of: (1) Illegal Recruitment in Large Scale under R.A. No. 8042 and; (2) four (4) counts of Estafa under Article 315 paragraph 2 (a) of the Revised Penal Code of the Philippines. She was acquitted in Criminal Cases Nos. 08-07987, R-PSY-09-0039, R-PSY-09-0041, R-PSY-090043 for four (4) counts of Estafa under Article 315 paragraph 2(a) of the Revised Penal Code of the Philippines on the ground of failure to present evidence by the prosecution.

The RTC gave due course to the Notice of Appeal^[40] filed by the accused,^[41] hence this appeal.

ASSIGNMENT OF ERROR

Accused, as the appellant before Us, raised a lone assignment of error, to wit:

THE COURT A *QUO* GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY DESPITE THE PROSECUTION'S FAILURE TO PROVE HER GUILT BEYOND REASONABLE DOUBT.

The accused-appellant posits that the prosecution failed to prove beyond reasonable doubt all the elements of the crime of illegal recruitment in large scale. The first element was not clearly established, *i.e.* that the accused-appellant undertook any recruitment activity defined under Article 13(b)^[42] or any prohibited practice