



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **03 February 2021** which reads as follows:*

“G.R. No. 249546 (*People of the Philippines v. Victor Vicente*). –

The Case

This appeal assails the Decision¹ dated January 15, 2019 of the Court of Appeals in CA-G.R. CR-HC 09312 which affirmed appellant Victor Vicente’s (Vicente) conviction for four (4) counts of simple illegal recruitment defined and penalized under Section 6 of Republic Act No. 8042 (RA 8042)² and one (1) count of estafa defined and penalized under Article 315, paragraph 2(a) of the Revised Penal Code (RPC).

The Proceedings Before the Trial Court

The Charge and Plea

Appellant Vicente and accused Anne Millete Vicente @ Minnie (Minnie) were charged as follows:

¹ Penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Marie Christine Azcarraga-Jacob and Rafael Antonio M. Santos, *rollo*, pp. 3-28.

² The Migrant Workers and Overseas Filipinos Act of 1995.

SC-10204
(Illegal recruitment; Violation of Sec. 6 of RA 8042)

That on or about and comprising the period from the months and date of January 12, 2002 up to May 20, 2002, in the Municipality of Pagsanjan, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping each other, without being authorized or licensed by the Philippine Overseas Employment Administration (POEA) to recruit overseas contract workers, did then and there willfully, unlawfully, and feloniously recruit, SIEGFRED PADILLA, MARK JAYSON PADILLA, FELICIDAD ZAPE, ALMA ALENTAJAN, NORA ALENTAJAN, MARIA DELA CRUZ, and JERICHO ALPANTE for employment as factory workers in Japan and actually demanded and received from them the following amounts as follows:

1. SIEGFRED PADILLA	P16,200.00
2. MARK JAYSON PADILLA	P15,000.00
3. FELICIDAD ZAPE	P18,000.00
4. ALMA ALENTAJAN	P18,000.00
5. NORA ALENTAJAN	P18,000.00
6. MARIA DELA CRUZ	P16,000.00
7. JERICHO ALPANTE	P17,700.00

[P118,900.00]

with a total amount of ONE HUNDRED EIGHTEEN THOUSAND NINE HUNDRED (Php118,900.00) PESOS Philippine Currency, as placement, processing, processing and other fees, but the accused failed to send them abroad, to the damage and prejudice of the said offended party in the aforesaid amount.

CONTRARY TO LAW.³

SC-10205
(Illegal recruitment; Violation of Sec. 6 of RA 8042)

That on or about and during the period from January 2, 2002 up to May 28, 2002, in the Municipality of Pagsanjan, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping each other, not being authorized nor licensed by the Philippine Overseas Employment Administration (POEA) to recruit overseas contract workers, did then and there willfully, unlawfully[,] and feloniously recruit CELSO SANTOS y JOVEN, OSCAR DE GUZMAN y BOLISAY, RUSSELLE UMALI y BOLISAY, EMELITA PARUNGO y DAZ, RAMIRO VICENTE y PEREZ, and JULYN FOLIENTE y DAZA as workers in Japan and actually demanded and received from them the following amounts as follows:

1. CELSO SANTOS y JOVEN	P30,200.00
2. OSCAR DE GUZMAN y BOLISAY	20,000.00
3. RUSSELLE UMALI y BOLISAY	20,000.00
4. EMELITA PARUNGO y DAZ	10,000.00

³ Record (Crim. Case No. SC-10204), p. 2.

5. RAMIRO VICENTE y PEREZ	11,500.00
6. JULYN FOLIENTE y DAZA	12,000.00

	P103,500.00

in the total amount of ONE HUNDRED THREE THOUSAND FIVE HUNDRED (Php103,500.00) PESOS Philippine Currency, as placement, processing and other fees, but the accused failed to send them abroad, to the damage and prejudice of the said offended party in the aforesaid amount.

CONTRARY TO LAW.⁴

SC-10211

(Illegal recruitment; Violation of Sec. 6 of RA 8042)

That on or about and during the period from March 27, 2002 up to May 22, 2002 at Barangay Sampaloc, Municipality of Pagsanjan, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping each other, not being authorized nor licensed by the Philippine Overseas Employment Administration (POEA) to recruit overseas contract workers, did then and there willfully, unlawfully and feloniously recruit, VICTOR SARMIENTO y DEL RIO and MYRA MERCADO y TUICO for employment as encoder (Victor Sarmiento) and factory worker (Myra Mercado) in Japan and actually demanded and received from them the following amounts as follows:

1. VICTOR SARMIENTO y DEL RIO	₱14,700.00
2. MYRA MERCADO y TUICO	19,200.00

	₱33,900.00

with a total amount of THIRTY THREE THOUSAND NINE HUNDRED (Php33,900.00) PESOS Philippine Currency, as placement, processing and other fees, but the accused failed to send them abroad, to the damage and prejudice of the said offended party in the aforesaid amount.

CONTRARY TO LAW.⁵

SC-12168

(Illegal recruitment; Violation of Sec. 6 of RA 8042)

That [sometime] in February 2002, Municipality of Pagsanjan, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law and neither license to recruit [for] employment abroad, with intent to defraud herein complainants, the above-named accused, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously represent themselves to have the power and licensed to recruit for employment abroad, thereby demanding and actually received from EUFRACIA REBONG, the amount of PhP10,000.00 and PhP20,000.00

⁴ Record (Crim. Case No. SC-10205), p. 1.

⁵ Record (Crim. Case No. SC-10211), p. 1.

from FLOCERFINA REBONG, with the total amount of THIRTY THOUSAND (Php30,000.00) PESOS, Philippine Currency, as processing fees for their employment abroad, knowing fully well that they are not licensed neither authorized nor has the power as such, to the damage and prejudice of said offended parties, in the aforementioned sum of money.

CONTRARY TO LAW.⁶

SC-12169
(Estafa)

That sometime in the month of January 28, 2002 and February 1, 2002, Municipality of Pagsanjan, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, with intent to gain, with abuse of trust and confidence, and of false representations that they have the power to deploy manpower for foreign employment, actually received from **FLOCERFINA REBONG**, the total amount of TWENTY THOUSAND (Php20,000.00) PESOS, Philippine Currency, accused once in possession of the said amount and far from complying with their obligation, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously misappropriate, misapply and convert the said amount to their own personal use and benefit and notwithstanding repeated demands made upon the accused, accused failed and refused and still fail and refuse to return the same, to the damage and prejudice of said offended party, in the aforementioned sum of money.

CONTRARY TO LAW.⁷

SC-12170
(Estafa)

That [sometime] in February 2002, Municipality of [P]agsanjan, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, with intent to defraud the herein complainant, with abuse of trust and confidence, and of false representation that they have the power to deploy manpower for foreign employment, actually received from EUFRACIA REBONG, the total amount of TEN THOUSAND (Php10,000.00) PESOS, Philippine Currency, accused once in possession of the said amount and far from complying with their obligation, conspiring, confederating, and mutually helping one another, did then and there willfully, unlawfully and feloniously misappropriate, misapply and convert the said amount to their own personal use and benefit and notwithstanding repeated demands made upon the accused, accused failed and refused and still fail and refuse to return the same, to the damage and prejudice of said offended party, in the aforementioned sum of money.

CONTRARY TO LAW.⁸

⁶ Record (Crim. Case No. SC-12168), p. 2.

⁷ Record (Crim. Case No. SC-12169), p. 1.

⁸ CA *rollo*, p. 110.

During arraignment, appellant and Minnie pleaded not guilty to all charges. Joint trial ensued.⁹

Prosecution's Version

In Crim. Case No. SC-10204, **Mark Jayson Padilla** and **Siegfred Padilla** testified that they each were introduced to spouses appellant and Minnie by their church mate. Minnie offered Mark a job as factory worker while Siegfred was offered a job in a motor pool department.¹⁰

In Crim. Case No. SC-10205, **Emelita Parungo** and **Julie Lyndamor Foliente**¹¹ stated that they met appellant and Minnie initially because they were selling lots in Pagsanjan, Laguna. Later, when they learned that appellant and Minnie were recruiting workers for employment abroad, Parungo and Foliente inquired about the same. Minnie offered them jobs as factory worker and assistant architect, respectively.¹²

In Crim. Case No. SC-10211, **Victor Sarmiento** and **Myra Mercado** testified that they went to appellant and Minnie's office when they learned that the latter were recruiting workers for employment abroad.¹³

On the other hand, in Crim. Case Nos. SC-12168, 12169, and 12170, the lone testimony of **Flocerfina Barcenas** was offered. She testified that she got introduced to appellant and Minnie by her cousin. She decided to apply for her son Sherwin Barcenas once she learned that they were recruiting workers for employment abroad.¹⁴

These complainants corroborated each other on material points, thus:

Appellant and Minnie, through their agency Osaka Group of International Companies, Ltd., Osaka, Japan (Osaka), offered complainants employment in Japan. Complainants went to the agency's office in Barangay Sampalocan, Pagsanjan, Laguna where they paid Minnie various amounts for passport application, medical examination, and other documentations needed for their job application. Minnie, in turn, issued and signed the receipts acknowledging their payments. Complainants also signed their respective employments contracts. Appellant was always present whenever complainants paid Minnie and the latter issued receipts, and when they signed their employment contracts.¹⁵

⁹ *Rollo*, p. 7.

¹⁰ *Id.* at 7-8.

¹¹ Referred to as "Julyn Foliente" in some parts of the records.

¹² *Id.* at 9-10.

¹³ *Id.* at 11-13.

¹⁴ *Id.* at 13-14.

¹⁵ *Id.* at 7-13.

Complainants attended seminars moderated by appellant who explained what they should expect when living in Japan. During these seminars, the applicants would raise questions to Minnie but she would refer them to appellant.¹⁶

The complainants were promised to be deployed in Japan but when their respective dates of departure came, none of them were able to leave for work abroad. They confronted appellant and Minnie and asked for the return of their payments, but to no avail. Complainants then charged appellant and Minnie with illegal recruitment and estafa.¹⁷

Per Philippine Overseas Employment Administration (POEA) Certification dated June 13, 2002, and Certification dated October 27, 2011, appellant and Minnie or their agency Osaka were not licensed nor were they ever given license to recruit workers for overseas employment.¹⁸

The prosecution presented the following as evidence: 1) Sworn Affidavits of the complainants, 2) receipts issued and signed by Minnie to complainants,¹⁹ and 3) complainants' working contracts with Osaka.

Defense's Version

Appellant, on the other hand, testified that he and Minnie were engaged in real estate business. He denied any connection with the agency Osaka or that he conducted the pre-deployment seminars.²⁰

Minnie also denied ownership of the agency Osaka. When she asked appellant about the complaints against them, he told her that his employer from Japan authorized him to hire skilled workers. She insisted that it was appellant who recruited complainants. Too, she did not sign any receipts nor accepted any payments from complainants. She claimed that the signature which appears on the receipts was not hers but that of appellant's cousin who accompanied him in recruiting workers.²¹

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Record (Crim. Case No. SC-10204), p. 12; (Crim. Case No. SC-10205), p. 17.

¹⁹ Receipts issued to Mark Padilla in the total amount of Sixteen Thousand Two Hundred (₱16,200.00); and receipt issued to Siegfried Padilla amounting to Fifteen Thousand Pesos (₱15,000.00), Record (Crim. Case No. SC-10204), pp. 17-18.

Receipts issued to Emelita Parungo and Julie Foliente, respectively, amounting to Ten Thousand Pesos (₱10,000.00) and Twelve Thousand Pesos (₱12,000.00); Record (Crim. Case No. SC-10205), pp. 14 and 16.

Receipts issued to Victor Sarmiento and Myra Mercado, respectively, in the amount of Fourteen Thousand Seven Hundred Pesos (₱14,700.00) and Nineteen Thousand Two Hundred Pesos (₱19,200.00), Record (Crim. Case No. SC-10211), pp. 12-13 and 16-17.

Receipt issued to Flocerfina Barcnas in the amount of Twenty Thousand Pesos (₱20,000.00), Record (Crim. Case No. 12168), p. 6.

²⁰ *CA rollo*, p. 116.

²¹ *Id.*

The Ruling of the Trial Court

By Consolidated Judgment²² dated December 8, 2016, the RTC found both appellant and Minnie guilty of three (3) counts of simple illegal recruitment and one (1) count of estafa. In Criminal Case No. SC-10205, however, Minnie was found guilty of simple illegal recruitment only while appellant was found guilty of illegal recruitment in large scale, thus:

WHEREFORE, premises considered, this Court hereby finds accused **VICTOR VICENTE** and **MILLETTE VICENTE @ MINNIE**:

1. In Criminal Case No. SC-10204, **GUILTY BEYOND REASONABLE DOUBT** of the crime of **SIMPLE ILLEGAL RECRUITMENT**. They are hereby sentenced to each suffer the penalty of imprisonment from six (6) years and one (1) day as minimum, to twelve (12) years, as maximum, and to pay a fine of Two Hundred Thousand Pesos (P200,000.00), and to jointly and severally pay the private complainants, Mark Jayson Padilla and Siegfred Padilla the sum of Sixteen Thousand Two Hundred Pesos (P16,200.00) and Fifteen Thousand Pesos (P15,000.00), respectively, plus legal interest from the date the Information was filed until it is fully paid;
2. In Criminal Case No. SC-10205, accused **VICTOR VICENTE** is **GUILTY BEYOND REASONABLE DOUBT** of the crime of **ILLEGAL RECRUITMENT IN LARGE SCALE** while **MINNIE VICENTE** is **GUILTY BEYOND REASONABLE DOUBT** of the crime of **SIMPLE ILLEGAL RECRUITMENT**. Victor is hereby sentenced to suffer the penalty of life imprisonment and a fine of One Million Pesos (P1,000,000.00), while Minnie is sentenced to suffer the penalty of imprisonment from six (6) years and one (1) day as minimum, to twelve (12) years, as maximum, and to pay a fine of Two Hundred Thousand Pesos (P200,000.00) and to jointly and severally pay the private complainants, Emelita Parungo, Ramiro Vicente, Julyn Foliente the sum of Ten Thousand Pesos (P10,000.00), Eleven Thousand Pesos (P11,000.00) and Twelve Thousand Pesos (P12,000.00), respectively, plus legal interest from the date the Information was filed until it is fully paid;
3. In Criminal Case No. SC-10211, **GUILTY BEYOND REASONABLE DOUBT** of the crime of **SIMPLE ILLEGAL RECRUITMENT**. They are hereby sentenced to each suffer the penalty of imprisonment from six (6) years and one (1) day as minimum, to twelve (12) years, as maximum, and to pay a fine of Two Hundred Thousand Pesos (P200,000.00) and to jointly and severally pay the private complainants, Victor Sarmiento and Myra Mercado, the sum of Fourteen Thousand Seven Hundred Pesos (P14,700.00) and Nineteen Thousand Two Hundred Pesos (P19,200.00), respectively, plus legal interest from the date the Information was filed until it is fully paid;

²² Penned by Presiding Judge Iluminado M. Dela Peña, *id.* at 106-124.

4. In Criminal Case No. SC-12168, **GUILTY BEYOND REASONABLE DOUBT** of the crime of **SIMPLE ILLEGAL RECRUITMENT**. They are hereby sentenced to each suffer the penalty of imprisonment from six (6) years and one (1) day as minimum, to twelve (12) years, as maximum, and to pay a fine of Two Hundred Thousand Pesos (P200,000.00);
5. In Criminal Case No. SC-12169, **GUILTY BEYOND REASONABLE DOUBT** of the crime of **ESTAFA**. There being no mitigating and aggravating circumstances, and applying the provisions of the Indeterminate Sentence Law, they are hereby sentenced to each suffer an indeterminate penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to six (6) years, eight (8) months and twenty (20) days of *prision mayor*, as maximum. They shall also jointly and severally pay the complainant, Flocerfina Barcenas, the sum of Twenty Thousand Pesos (P20,000.00) plus interest from the date the Information was filed until it is fully paid;
6. In Criminal Case No. SC-12170, for lack of jurisdiction, the same is hereby **DISMISSED**, without prejudice.

x x x x

SO ORDERED.²³

The trial court held that appellant and Minnie were engaged in recruitment activities when they represented themselves to complainants of having the capacity to deploy workers for a job abroad. Complainants positively identified Minnie who received payment as processing fees and issued receipts therefor, while appellant conducted seminars pre-deployment. Complainants signed their employment contracts in the presence of appellant and Minnie. The prosecution also presented twin Certifications issued by POEA stating that appellant and Minnie nor their agency Osaka were not licensed to recruit workers for employment abroad.²⁴

As for estafa, the prosecution established that appellant and Minnie defrauded Flocerfina Barcenas by leading her to believe that they were capable of deploying her son to Japan for work. Flocerfina would not have parted with her money if not for such misrepresentation, causing her damage.²⁵

The trial court likewise ruled that complainants' categorical and unequivocal testimony that appellant and Minnie promised them work in Japan prevails over appellant and Minnie's defenses of denial and alibi.

²³ *Id.* at 122-124.

²⁴ *Id.* at 118-120.

²⁵ *Id.* at 120.

The Proceedings Before the Court of Appeals

Appellant alone filed an appeal. He maintained that the trial court erred in finding him guilty of estafa and illegal recruitment despite the prosecution's alleged failure to prove his involvement in the recruitment activities. He argued, in the main:

The pieces of evidence show that Minnie as the sole perpetrator since she personally transacted with complainants, made representations for employment abroad, received payments from complainants, and issued receipts therefor. His mere presence in the office and his alleged conduct of seminar in no way prove that this was for the purpose of promising overseas employment.²⁶

Deceit, likewise, was not proven since his involvement in the recruitment activities was not proven either.²⁷

The People, through the Office of the Solicitor General (OSG), riposted: all elements of illegal recruitment and estafa were established. There was complicity between appellant and Minnie as they were husband and wife. It was incredible for appellant to deny his participation in the illegal activities since the same were done in his presence and he did not do anything to contradict Minnie's misrepresentation of having capacity to deploy workers abroad.²⁸

The Ruling of the Court of Appeals

In its assailed Decision²⁹ dated January 15, 2019, the Court of Appeals modified:

WHEREFORE, in view of the foregoing, the instant appeal is **DENIED**. The 8 December 2016 Consolidated Judgment of the Regional Trial Court, Branch 28, Santa Cruz, Laguna is **AFFIRMED with MODIFICATION**.

In **SC-10204, SC-10211 and SC-12168** the Consolidated Judgment is **AFFIRMED with MODIFICATION** that the legal interest on the monetary awards shall earn 6% interest per annum from [the] time of the filing of the respective informations until fully paid.

In **SC-10205**, the Consolidated Judgment is **AFFIRMED with MODIFICATION**. Herein accused-appellant Victor Vicente is **found GUILTY BEYOND REASONABLE DOUBT of SIMPLE ILLEGAL RECRUITMENT** under Section 6 of the Migrant Workers and Overseas

²⁶ *Id.* at 94-98.

²⁷ *Id.* at 99.

²⁸ *Id.* at 158-165.

²⁹ Penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justice Marie Christine Azcarraga-Jacob and Associate Justice Rafael Antonio M. Santos, *rollo*, pp. 3-28.

Filipinos Act of 1995. Applying the Indeterminate Sentence Law, he is sentenced to suffer the indeterminate penalty of imprisonment ranging from six (6) years and one (1) day as minimum to ten (10) years as maximum, and to pay a fine of Two Hundred Thousand Pesos (P200,000.00) and to jointly and severally pay the private complainants Emelita Parungo and Julyn Foliente the sum of Ten Thousand Pesos (P10,000.00) and Twelve Thousand Pesos (P12,000.00), respectively, with legal interest of 6% per annum from the date the Information was filed until it is fully paid;

In **SC-12169**, the Consolidated Judgment is **AFFIRMED with MODIFICATION**. Herein accused-appellant Victor Vicente is found **GUILTY BEYOND REASONABLE DOUBT of the crime of ESTAFA**. In view of the passage of Republic Act No. 10951, accused-appellant Victor Vicente is sentenced to suffer the straight penalty of four (4) months of *arresto mayor* plus legal interest of 6% per annum on the monetary awards from the filing of the Information until fully paid.

All the other aspects of the Decision are **AFFIRMED**.

SO ORDERED.³⁰

According to the Court of Appeals, there was no other conclusion except that the seminars which appellant conducted were for the purpose of making it appear that he and Minnie had the capability to send complainants for employment abroad. Appellant conducted the seminars about living conditions in Japan within the same premises where his co-accused wife received payment from complainants. Thus, his conduct of seminars was a direct participation in the scheme of recruiting complainants for work abroad.³¹

The Court of Appeals, however, found that in SC-10205, appellant can only be convicted of simple illegal recruitment because the element “that the offense be committed against three or more persons, individually or as a group” was absent.³²

The Present Appeal

Appellant now seeks affirmative relief from the Court and prays anew for his acquittal. For the purpose of this appeal, the OSG³³ and appellant³⁴ both manifested that in lieu of supplemental briefs, they were adopting their respective briefs in the Court of Appeals.

³⁰ *Id.* at 27-28.

³¹ *Id.* at 21-23.

³² *Id.* at 23.

³³ *Id.* at 36-38.

³⁴ *Id.* at 42-44.

Issue

Did the Court of Appeals err in affirming with modification the trial court's verdict of conviction for four (4) counts of simple illegal recruitment and one (1) count of estafa?

Ruling

Appellant's guilt for simple illegal recruitment was proven beyond reasonable doubt.

Under Section 6 of RA 8042, illegal recruitment, when undertaken by a non-licensee or non-holder of authority as contemplated under Article 13(f) of the Labor Code, shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, procuring workers, and including referring, contract services, promising or advertising for employment abroad, whether for profit or not.³⁵

³⁵ *People v. Estrada*, 826 Phil. 894, 908 (2018).

Under Article 13(b) of Presidential Decree No. 442, as amended, also known as the *Labor Code of the Philippines*, recruitment and placement refers to "any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers, and includes referrals, contact services, promising or advertising for employment, locally or abroad, whether for profit or not: *Provided*, That any person or entity which, in any manner, offers or promises for a fee employment to two or more persons shall be deemed engaged in recruitment and placement."

Illegal recruitment, on the other hand, is defined in Article 38:

Article 38. **ILLEGAL RECRUITMENT.** - (a) Any recruitment activities, including the prohibited practices enumerated under Article 34 of this Code, to be undertaken by non-licensees or non-holders of authority shall be deemed illegal and punishable under Article 39 of this Code. The Department of Labor and Employment or any law enforcement officer may initiate complaints under this Article.

x x x x

RA 8042 or the *Migrant Workers and Overseas Filipinos Act of 1995*, approved on 7 June 1995, further strengthened the protection extended to those seeking overseas employment. Section 6, in particular, extended the activities covered under the term *illegal recruitment*:

II. ILLEGAL RECRUITMENT

Section 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, contact 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.

To sustain a conviction for illegal recruitment, the following elements must concur: *one*, the offender has no valid license or authority required by law to enable one to lawfully engage in the recruitment and placement of workers; and *two*, the offender undertakes any of the activities within the meaning of recruitment and placement defined in Article 13 (b) of the Labor Code, or any of the prohibited practices enumerated under Section 6 of RA 8042.³⁶

These elements are present in this case.

-
- (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;
 - (b) To furnish or publish any false notice or information or document in relation to recruitment or employment;
 - (c) To give any false notice, testimony, information or document or commit any act of misrepresentation for the purpose of securing a license or authority under the Labor Code;
 - (d) To induce or attempt to induce a worker already employed to quit his employment in order to offer him another unless the transfer is designed to liberate a worker from oppressive terms and conditions of employment;
 - (e) To influence or attempt to influence any persons or entity not to employ any worker who has not applied for employment through his agency;
 - (f) To engage in the recruitment or placement of workers in jobs harmful to public health or morality or to dignity of the Republic of the Philippines;
 - (g) To obstruct or attempt to obstruct inspection by the Secretary of Labor and Employment or by his duly authorized representative;
 - (h) To fail to submit reports on the status of employment, placement vacancies, remittances of foreign exchange earnings, separations from jobs, departures and such other matters or information as may be required by the Secretary of Labor and Employment;
 - (i) To substitute or alter to the prejudice of the worker, employment contracts approved and verified by the Department of Labor and Employment from the time of actual signing thereof by the parties up to and including the period of the expiration of the same without the approval of the Department of Labor and Employment;
 - (j) For an officer or agent of a recruitment or placement agency to become an officer or member of the Board of any corporation engaged in travel agency or to be engaged directly or indirectly in the management of a travel agency;
 - (k) To withhold or deny travel documents from applicant workers before departure for monetary or financial considerations other than those authorized under the Labor Code and its implementing rules and regulations;
 - (l) Failure to actually deploy without valid reasons 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.

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.

³⁶ *Id.*

First, per POEA Certifications dated June 13, 2002³⁷ and October 27, 2011, appellant or the agency Osaka were not licensed nor were they ever given license to recruit workers for overseas employment.

Second, despite not having such authority, appellant, along with Minnie, engaged in recruitment activities. Complainants categorically testified that appellant and Minnie promised them employment in Japan, collected from them various amounts as fees, and signed employment contracts with them. These gave complainants the impression that appellant had the power or ability to send them abroad for work, such that they were convinced to part with their money.

Appellant, nonetheless, insists that it was Minnie alone who recruited complainants by convincing them to apply for a job, receiving payments from them, issuing receipts therefor, and signing employment contracts with them. If at all, he only held seminars about life conditions in Japan without even mentioning the kind of employment or salaries they should expect.

The argument utterly fails. There is conspiracy when two (2) or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy need not be express as it can be inferred from the acts of the accused themselves when their overt acts indicate a joint purpose and design, concerted action, and community of interests.³⁸

Here, we find that appellant and Minnie conspired to recruit complainants. Record shows that appellant was physically present in the agency's office when: 1) Minnie convinced complainants to apply for employment abroad, 2) complainants paid Minnie, 3) Minnie issued receipts for payments received from complainants, and 4) complainants signed their employment contracts. Appellant also conducted seminars for complainants' pre-deployment wherein he talked about the living conditions in Japan and answered questions from the applicants. Clearly, appellant was not an innocent bystander in this case. Not only did he know about Minnie's repeated acts of recruitment, he himself participated therein. Appellant and Minnie each undertook a part to reach their common objective of recruiting complainants.

In *People v. Sison*,³⁹ the Court held that the accused conspired with one another in their illegal recruitment activities. Their concerted action is

³⁷ Record (Crim. Case No. SC-10204), p. 12; (Crim. Case No. SC-10205), p. 17.

³⁸ Article 8 of the Revised Penal Code provides:

Article 8. *Conspiracy and proposal to commit felony.* — Conspiracy and proposal to commit felony are punishable only in the cases in which the law specially provides a penalty therefor.

A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.

There is proposal when the person who has decided to commit a felony proposes its execution to some other person or persons.

³⁹ 816 Phil. 8, 23 (2017).

evident in that one of them received payments from the recruits; another signed the acknowledgment receipt; and that the three accompanied their recruits together in securing their visas. These gave the recruits the impression that they were indeed working together.

Too, in *People v. Daud*,⁴⁰ the Court also found conspiracy among the accused since appellant therein was physically present during the time that the complainants were shown job orders, apprised them of job benefits, and while they were paying for the employment fees.

Applying *Sison* and *Daud*, appellant's synchronized action with Minnie showed that they acted in conspiracy with each other to obtain a common objective: to recruit complainants for employment abroad despite not being authorized to do so. The act of one is the act of all.

Appellant is guilty of estafa

An accused, for the same acts, may be convicted separately for illegal recruitment under RA 8042 and estafa under Article 315(2) (a) of the RPC. *People v. Daud*⁴¹ explained:

In this jurisdiction, it is settled that a person who commits illegal recruitment may be charged and convicted separately of illegal recruitment under the Labor Code and estafa under par. 2(a) of Art. 315 of the Revised Penal Code. The offense of illegal recruitment is *malum prohibitum* where the criminal intent of the accused is not necessary for conviction, while estafa is *malum in se* where the criminal intent of the accused is crucial for conviction. Conviction for offenses under the Labor Code does not bar conviction for offenses punishable by other laws. Conversely, conviction for estafa under par. 2(a) of Art. 315 of the Revised Penal Code does not bar a conviction for illegal recruitment under the Labor Code. It follows that one's acquittal of the crime of estafa will not necessarily result in his acquittal of the crime of illegal recruitment in large scale, and *vice versa*.

Article 315, paragraph 2(a) of the RPC states:

Article 315. Swindling (estafa). - Any person who shall defraud another by any of the means mentioned herein below x x x:

x x x x

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) By using a fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions; or by means of other similar deceits.

⁴⁰ 734 Phil. 698, 716 (2014).

⁴¹ *Id.* at 720.

Based thereon, estafa under paragraph 2(a) has the following elements: (1) the accused defrauded another by abuse of confidence or by means of deceit; and (2) the offended party, or a third party, suffered damage or prejudice capable of pecuniary estimation.⁴²

Here, both elements were duly established. **One**, as discussed, appellant acted in conspiracy with Minnie to mislead complainants into believing that they can deploy them (complainants) abroad for employment. Particularly, Flocerfina Barcenas believed appellant would help her son Sherwin Barcenas secure a job in Japan. **Two**, Flocerfina Barcenas paid appellant and Minnie Twenty Thousand Pesos (₱20,000.00) to process her son's application. Unfortunately, her son was not able to leave for work abroad nor did she get her money back, thus, causing her damage and prejudice. In light of the foregoing, appellant's conviction for the crime of estafa is upheld.

In *People v. Estrada*,⁴³ the prosecution therein established that the accused falsely represented herself as possessing power to deploy persons for overseas placement. Such active representation of having the capacity to deploy the complainants abroad despite not having the authority or license to do so from the POEA constituted deceit - the first element of *estafa*. More, because of her assurances, the complainants parted with their money in order to pay the accused the various fees which they thought were necessary for their deployment abroad resulting in damage to each of the private complainants - the second element of *estafa*. The Court, thus, affirmed the accused's conviction for estafa.

Penalties

Appellant committed the various counts of simple illegal recruitment in 2002. Thus, the applicable penalties are those provided under RA 8042 prior to its amendment by Republic Act No. 10022 (RA 10022) in 2009.

Section 7 of RA 8042 bears the penalty for simple illegal recruitment, thus:

SECTION 7. Penalties. -

- (a) **Any person found guilty of illegal recruitment shall suffer the 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 two hundred thousand pesos (P200,000.00) nor more than five hundred thousand pesos (P500,000.00).**

⁴² *People v. Estrada*, supra note 35, at 910.

⁴³ *Id.* at 911.

- (b) The penalty of life imprisonment and a fine of not less than five hundred thousand pesos (P500,000.00) nor more than one million pesos (P1,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined herein.

Provided, however, that the maximum penalty shall be imposed if the person illegally recruited is less than eighteen (18) years of age or committed by a non-licensee or non-holder of authority.⁴⁴ (Emphases supplied)

In *Gaspar v. People*,⁴⁵ the Court imposed the maximum penalty for simple illegal recruitment on the accused, who was a non-licensee or non-holder of authority. Applying the indeterminate sentence law, the accused was sentenced to an indeterminate penalty of ten (10) years and one (1) day, as minimum, to twelve (12) years, as maximum. In addition, she was held liable to pay a fine of P500,000.00.

Applying *Gaspar* in this case, appellant should be sentenced to an indeterminate penalty of ten (10) years and one (1) day, as minimum, to twelve (12) years, as maximum, and a fine of Five Hundred Thousand Pesos (P500,000.00) for each count of simple illegal recruitment.

As for estafa, Article 315 of the RPC, as amended by RA 10951,⁴⁶ prescribes *arresto mayor* in its medium and maximum periods where the amount does not exceed Forty Thousand Pesos (P40,000).⁴⁷

⁴⁴ *Gaspar v. People*, G.R. No. 234839, March 13, 2019.

⁴⁵ G.R. No. 234839 (Notice), March 13, 2019.

⁴⁶ An Act Adjusting the Amount or the Value of Property and Damage on Which a Penalty is Based and the Fines Imposed Under the Revised Penal Code, Amending for the Purpose Act No. 3815, Otherwise Known as "The Revised Penal Code", as Amended.

Section 85. Article 315 of the same Act, as amended by Republic Act No. 4885, Presidential Decree No. 1689, and Presidential Decree No. 818, is hereby further amended to read as follows:

Art. 315. Swindling (estafa). - Any person who shall defraud another by any of the means mentioned herein below shall be punished by:

x x x x

4th. By *arresto mayor* in its medium and maximum periods, if such amount does not exceed Forty thousand pesos (P40,000):

x x x x

⁴⁷ **SECTION 85.** Article 315 of the same Act, as amended by Republic Act No. 4885, Presidential Decree No. 1689, and Presidential Decree No. 818, is hereby further amended to read as follows:

"ART. 315. Swindling (estafa). --- Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

x x x x

"4th. By *arresto mayor* in its medium and maximum periods, if such amount does not exceed Forty thousand pesos (P40,000): *Provided*, That in the four cases mentioned, the fraud be committed by any of the following means:

x x x x

"2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

"(a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits."

In *People v. Cayabyab*,⁴⁸ the Court explained that since the new penalty is more beneficial to the accused and in view of the non-applicability of the indeterminate sentence law, the penalty of *arresto mayor* shall be imposed as a single or straight penalty.

Thus, the Court of Appeals correctly sentenced appellant to the straight penalty of four (4) months of *arresto mayor* and ordered him to indemnify Flocerfina Barcenas in the amount of Twenty Thousand Pesos (₱20,000.00).

Another point. Section 11(a), Rule 122 of the *Rules of Court*, provides:

Section 11. *Effect of appeal by any of several accused.* – (a) **An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter; x x x**

x x x x

*Lim v. Court of Appeals*⁴⁹ ordained that the benefits of this provision extends to all the accused, regardless of whether they appealed or not.

Thus, in *People v. Valdez*,⁵⁰ the Court applied the downgrading of the crimes committed from murder to homicide (and the resultant lighter penalties) to Edwin Valdez despite the withdrawal of his appeal. The downgrading of the crimes committed was definitely favorable to him. Too, to deny him the benefit of the lessened criminal responsibilities would be highly unfair, considering that the Court had found the he and his co-accused acted in concert in their deadly assault against the victims, warranting their equal liability under the principle of conspiracy.

Here, since appellant's penalty for estafa was downgraded as result of the effectivity of RA 10951 amending Article 315 of the Revised Penal Code, the same penalty of *arresto mayor* should, therefore, be also applied to his co-accused Minnie. For the rule and jurisprudence above dictate that the favorable modification of the penalty should likewise apply to an accused despite not having filed her appeal.

WHEREFORE, the appeal is **DISMISSED**. The assailed Decision dated January 15, 2019 in CA-G.R. CR-HC-09312 is **AFFIRMED** with **MODIFICATION**.

⁴⁸ G.R. No. 227357 (Notice), February 7, 2018.

⁴⁹ 524 Phil. 692, 700-701 (2006).

⁵⁰ 703 Phil. 519, 528 (2013).

Appellant Victor Vicente is found **GUILTY** of **SIMPLE ILLEGAL RECRUITMENT** in Criminal Case Nos. SC-10204, SC-10205, SC-10211, and SC-12168. He is sentenced to an indeterminate sentence of ten (10) years and one (1) day, as minimum, to twelve (12) years, as maximum, and ordered to pay a fine of ₱500,000.00 for each count.

Appellant is further directed to indemnify complainants in the following amounts:

Mark Jayson Padilla	Sixteen Thousand Two Hundred (₱16,200.00)
Siegfred Padilla	Fifteen Thousand Pesos (₱15,000.00)
Emelita Parungo	Ten Thousand Pesos (₱10,000.00)
Julie Lyndamor Foliente	Twelve Thousand Pesos (₱12,000.00)
Victor Sarmiento	Fourteen Thousand Seven Hundred Pesos (₱14,700.00)
Myra Mercado	Nineteen Thousand Two Hundred Pesos (₱19,200.00)

In Criminal Case No. SC-12169, appellant Victor Vicente is found **GUILTY** of **ESTAFA** and sentenced to four (4) months of *arresto mayor*. He is also ordered to indemnify Flocerfina Barcenas in the amount of Twenty Thousand Pesos (₱20,000.00).

The amounts of indemnity shall earn an interest at the rate of twelve percent (12%) *per annum* from the filing of the Information, *viz.*:

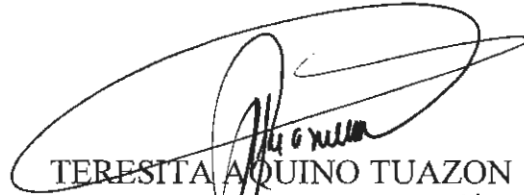
- On February 4, 2003 for Criminal Case Nos. SC-10204, SC-10211, and SC-10205
- On March 8, 2006 for Criminal Case Nos. SC-12168 and SC-12169

until June 30, 2013 and six percent (6%) *per annum* from July 1, 2013 until the finality of the Resolution, and the total amount of the foregoing shall, in turn, earn an interest at the rate of six percent (6%) *per annum* from finality of this Resolution until full payment.

As for Anne Millete Vicente @ Minnie, although she did not appeal her conviction in Criminal Case No. SC-12169 before the Court, she, too, is rightfully entitled and accordingly sentenced to the reduced penalty of four (4) months of *arresto mayor*.

SO ORDERED.”

By authority of the Court:



TERESITA AQUINO TUAZON
Division Clerk of Court
27 MAY 2021 5/27

*OFFICE OF THE SOLICITOR GENERAL (reg)
134 Amorsolo Street
1229 Legaspi Village
Makati City

*PUBLIC ATTORNEY’S OFFICE (reg)
Special & Appealed Cases Service
Department of Justice
PAO-DOJ Agencies Building
NIA Road corner East Avenue
1104 Diliman, Quezon City

*VICTOR VICENTE (reg)
Accused-Appellant
c/o The Director
Bureau of Corrections
1770 Muntinlupa City

THE DIRECTOR (reg)
Bureau of Corrections
1770 Muntinlupa City

HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 28
Santa Cruz, Laguna
(Crim. Case Nos. SC-10204, SC-10205
SC-10211, SC-12168, SC-12169 & 12170)

JUDGMENT DIVISION (x)
Supreme Court, Manila

PUBLIC INFORMATION OFFICE (x)
LIBRARY SERVICES (x)
[For uploading pursuant to A.M. No. 12-7-SC]

OFFICE OF THE CHIEF ATTORNEY (x)
OFFICE OF THE REPORTER (x)
PHILIPPINE JUDICIAL ACADEMY (x)
Supreme Court, Manila

COURT OF APPEALS (x)
Ma. Orosa Street
Ermita, 1000 Manila
CA-G.R. CR-HC No. 09312

*with copy CA Decision dated 15 Jan. 2019
Please notify the Court of any change in your address.
GR249546. 02/03/2021(145)URES