



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 197539

Present:

- versus -

ANGELITA I. DAUD,
HANELITA M. GALLEMIT and
RODERICK GALLEMIT y
TOLENTINO,
 Accused.

SERENO, CJ.,
 Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, JJ.

RODERICK GALLEMIT y
TOLENTINO,
 Accused-appellant.

Promulgated:

JUN 02 2014

X-----X

D E C I S I O N

LEONARDO-DE CASTRO, J.:

For Our consideration is an appeal from the Decision¹ dated March 18, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03168, which affirmed the Joint Decision² dated January 15, 2007 of the Regional Trial Court (RTC), Parañaque City, Branch 195, in Criminal Case Nos. 03-0122 to 30, finding accused-appellant Roderick Gallemmit y Tolentino guilty of the crimes of (1) illegal recruitment in large scale, as defined and penalized under Article II, Section 6, in relation to Section 7(b) of Republic Act No. 8042, otherwise known as the “Migrant Workers and Overseas Filipinos Act of 1995;” and (2) estafa, as defined and penalized under Article 315, paragraph 2(a) of the Revised Penal Code, but modified the penalties imposed upon appellant for said crimes.

In an Information dated January 3, 2003, docketed as Criminal Case No. 03-0122, Angelita I. Daud (Daud), Hanelita M. Gallemmit (Hanelita), and

¹ *Rollo*, pp. 2-22; penned by Associate Justice Rosalinda Asuncion-Vicente with Associate Justices Romeo F. Barza and Manuel M. Barrios, concurring.

² *CA rollo*, pp. 32-43; penned by Judge Aida Estrella Macapagal.

MM

appellant Roderick Gallemit y Tolentino were charged before the RTC with illegal recruitment in large scale, allegedly committed as follows:

That on or about or sometime during the period from February 5, 2001 to August 2001, in the City of Parañaque, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and both of them mutually helping and aiding one another, representing themselves to have the capacity to contract, enlist and transport Filipino workers for employment abroad, did then and there willfully, unlawfully and feloniously, for a fee, recruit and promise employment abroad to complainants *Marcelo De Guzman, Evangeline Relox, Maricel Rayo, Brigida Rayo, Gina Decena, Nenita Policarpio, Myrna Crisostomo and Francisco Poserio*, without first securing the required license or authority from the Department of Labor and Employment thus deemed committed in large scale and therefore amounting to economic sabotage.³

Eight more Informations, all dated January 3, 2003, docketed as Criminal Case Nos. 03-0123 to 03-0130, charged Daud, Hanelita, and appellant before the RTC with eight counts of Estafa, committed separately upon eight private complainants, namely, Marcelo I. De Guzman (De Guzman), Evangeline I. Relox, Marcelo E. Rayo, Brigada A. Rayo, Gina T. Decena (Decena), Nenita F. Policarpio, Myrna S. Crisostomo and Francisco S. Poserio (Poserio), respectively.

The Information in Criminal Case No. 03-0123 alleged:

That on or about covering the period from February 2001 up to March 2001, in the City of Parañaque, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and all of them mutually helping and aiding one another, did then and there willfully and feloniously defraud Marcelo de Guzman y Ignacio pertinent to his overseas job employment if he would deliver to them the amount of ₱545,000.00 by means of other similar deceit knowing it to be false and only made to induce the aforementioned complainant to give and deliver the said amount of ₱545,000.00 and accused once in possession of the same, did then and there willfully, unlawfully and feloniously misapply and misappropriate the said amount to their own personal use and benefit to the damage and prejudice of the said MARCELO DE GUZMAN y IGNACIO in the aforementioned amount.⁴

The seven other Informations in Criminal Case Nos. 03-0124 to 03-0130 were similarly worded as the aforequoted Information, except as to the name of the private complainant and the amount purportedly collected from him/her, to wit:

³ Records, p. 2.

⁴ Id. at 46.

Docket No.	Private Complainant	Amount Collected
Crim. Case No. 03-0124 ⁵	Evangeline I. Relox,	₱25,000.00
Crim. Case No. 03-0125 ⁶	Marcelo E. Rayo	₱45,000.00
Crim. Case No. 03-0126 ⁷	Brigada A. Rayo	₱28,000.00
Crim. Case No. 03-0127 ⁸	Gina T. Decena	₱70,000.00
Crim. Case No. 03-0128 ⁹	Nenita F. Policarpio	₱50,000.00
Crim. Case No. 03-0129 ¹⁰	Myrna S. Crisostomo	₱24,500.00
Crim. Case No. 03-0130 ¹¹	Francisco S. Poserio	₱70,000.00

Only appellant was apprehended, while his co-accused Daud and Hanelita eluded arrest and remained at large.

The nine criminal cases against appellant before the RTC were consolidated. When arraigned, appellant pleaded not guilty to all the charges against him. Thereafter, joint trial of the nine criminal cases ensued.

The prosecution offered as evidence the Philippine Overseas Employment Administration (POEA) Certification dated September 19, 2002 stating that Green Pasture Worldwide Tour and Consultancy, with address at India St., Don Bosco, Parañaque City, set up and operated by appellant and his co-accused, is not licensed to recruit workers for overseas employment.¹² Of all the private complainants, only De Guzman, Decena, and Poserio testified against Gallemit. The presentation of a POEA representative was dispensed with after the defense admitted the due execution and genuineness of the POEA Certification dated September 19, 2002.¹³ Evidence for the defense consisted solely of appellant's testimony.

After trial on the merits, the RTC rendered its Decision dated January 15, 2007 finding appellant guilty of Illegal Recruitment in Large Scale and Estafa on three (3) counts. The dispositive portion of the judgment reads:

WHEREFORE, judgment is hereby rendered as follows:

(1) In **Criminal Case No. 03-0122**, the Court finds accused **Roderick Gallemit y Tolentino, GUILTY BEYOND REASONABLE DOUBT** as principal of the crime of **Illegal Recruitment in Large Scale in violation of Section 6 in relation to Section 7 of RA 8042**, otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995 and hereby sentences him to a penalty of life imprisonment and a fine of Five Hundred Thousand Pesos (₱500,000.00).

(2) In **Criminal Case No. 03-0123**, the Court finds accused **Roderick Gallemit y Tolentino GUILTY BEYOND REASONABLE**

⁵ Id. at 49.
⁶ Id. at 52.
⁷ Id. at 55.
⁸ Id. at 58.
⁹ Id. at 61.
¹⁰ Id. at 64.
¹¹ Id. at 67.
¹² Id. at 403.
¹³ Id. at 394.

DOUBT as principal of the crime of **Estafa under Article 315 paragraph 2(a) of the Revised Penal Code** and hereby sentences him to suffer the Indeterminate Penalty of two (2) years and four (4) months as minimum to thirteen (13) years as maximum which carries with it the accessory penalty of suspension from public office, from the right to follow a profession or calling, and that of perpetual special disqualification from the right of suffrage. The accused is further sentenced to pay complaining witness Marcelo De Guzman y Ignacio the amount of Eighty Thousand Pesos (₱80,000.00) plus twelve percent (12%) interest from the date of the filing of the Information on February 3, 2003, with subsidiary imprisonment in case of insolvency, plus the costs of suit;

(3) In **Criminal Case No. 03-0127**, the Court finds accused **Roderick Gallemit y Tolentino GUILTY BEYOND REASONABLE DOUBT** as principal of the crime of **Estafa under Article 315 paragraph 2(a) of the Revised Penal Code** and hereby sentences him to suffer the indeterminate Penalty of two (2) years, four (4) months as minimum to nine (9) years as maximum which carries with it the accessory penalty of suspension from public office, from the right to follow a profession or calling, and that of perpetual special disqualification from the right of suffrage. The accused is further sentenced to pay the costs of suit; and

(4) In **Criminal Case No. 03-0130**, the Court finds accused **Roderick Gallemit y Tolentino GUILTY BEYOND REASONABLE DOUBT** as principal of the crime of **Estafa under Article 315 paragraph 2(a) of the Revised Penal Code** and hereby sentences him to suffer the Indeterminate Penalty of two (2) years and four (4) months as minimum to twelve (12) years and two (2) months as maximum which carries with it the accessory penalty of suspension from public office, from the right to follow a profession or calling, and that of perpetual special disqualification from the right of suffrage. The accused is further sentenced to pay costs of suit.

(5) **Criminal Case Nos. 03-0124, 03-0125, 03-0126, 03-0128, and 03-0129**, for failure to prosecute, are hereby ordered Dismissed, as against accused Roderick Gallemit.

Considering that accused **ANGELITA I. DAUD** and **HANELITA M. GALLEMIT** remain at large for more than six (6) months since the issuance and delivery of the warrant of arrest to the proper police or peace officer, the cases against them are hereby ordered **ARCHIVED** pursuant to Administrative Circular No. 7-A-92. Let an alias warrant of arrest be issued against them.¹⁴

Following the denial of his Motion for Reconsideration by the RTC in an Order¹⁵ dated April 3, 2007, appellant filed an appeal before the Court of Appeals.

The Court of Appeals summarized the private complainants' testimonies against appellant, *viz*:

¹⁴ CA *rollo*, pp. 41-42.

¹⁵ Records, p. 509.

Marcelo de Guzman [(De Guzman)], a dentist by profession with a clinic in Bulacan, testified that sometime in January 2001, he was introduced by his patient Modesta Marqueda to her cousin, accused [Daud]. [Daud] encouraged [De Guzman] to apply for work abroad and convinced him that she would be able to send him to Korea. To prove to [De Guzman] that she was capable of sending workers abroad, [Daud] invited him to visit her office located at Taft Avenue, Manila.

A month later, [De Guzman] and his cousins Maricel Rayo, Brigida Rayo, Myrna Crisostomo, Francisco Poserio, Evangeline Relox, [Decena] and Nenita Policarpio, went to see [Daud] at the Jemimah International Manpower Services, located at Taft Avenue, Manila where the latter was then working as a liaison officer. The group was shown job orders and photos of [Daud] with Korean employees to prove that she was indeed sending workers abroad. It was at this office that [De Guzman] first met [appellant] and [Hanelita].

Meanwhile, [Daud], together with [Hanelita] and [appellant], put up their own business named Green Pastures Worldwide Tours and Consultancy Corporation in their residence at No. 4 Sta. Maria Apartment, India St., Better Living Subdivision, Barangay Don Bosco, Parañaque City.

Having been convinced by the documents shown to him at the Taft Avenue office, [De Guzman] paid [Daud] the amount of ₱35,000[.]00 as initial payment for his placement fee at the latter's office and residence in Parañaque City on February 2, 2001. On February 5, 2001, [De Guzman] gave [Daud] the amount of ₱15,000[.]00 which was witnessed by Hanelita. He gave another ₱15,000.00 on February 22, 2001. However, he lost the original receipts.

On March 3, 6 and 7, 2001, [De Guzman] again gave [Daud] x x x different amounts consisting of ₱35,000.00, ₱30,000.00 and ₱15,000.00, respectively, at her office in Parañaque City (Exhibits "A" to "C"). In [De Guzman]'s presence, [Daud] counted the money, issued receipts therefor as "processing fees of Nike applicants", affixed her signature after signing the receipts in the name of "Nimfa Min". [Daud] explained to him that "Nimfa Min" was her contact who happened to be the wife of a Korean national. [De Guzman] trusted [Daud] and accepted her explanation. Whenever he gave his payment to [Daud], it was in the presence of Hanelita and [appellant] but he did not require the two to sign as witnesses because he trusted them as they were members of the same family. [De Guzman] was told by [Daud] and [appellant] that he and his group would be leaving in two week's time.

[De Guzman] and his companions were instructed to appear before the Korean Embassy and were promised that they would be able to leave on March 11, 2001 as trainee workers in Korea where they would earn a monthly salary of US\$400, overtime pay, with benefits of free board and lodging and 30-day leave within a year. De Guzman's group were shown photocopies of their passport and stamped visas for Korea. However, they were not given their working permits and job contracts.

When their departure date was getting near, [Daud] postponed it thrice. Eventually, [De Guzman] asked from accused [Daud] a photocopy of his passport with a stamped Korean Visa. Upon inquiry with the

Korean Embassy, [De Guzman] was told that it was fake. He proceeded to the Philippine Overseas Employment Administration (POEA) and verified the registration of Green Pastures Worldwide Tour and Consultancy Corporation. The POEA informed them that it was not registered with the POEA and gave [De Guzman] a certification to the effect that the said agency was not licensed to recruit employees for abroad (Exhibit D).

Embarrassed because of the money given by his cousins, [De Guzman] verbally asked [Daud], Hanelita and [appellant] to return the money. They promised him that they would settle the matter but they failed to return the money. x x x.

Gina Decena, for her part testified that sometime in January 2001, she was introduced by her cousin, Maricel Rayo, to accused [Daud], [Hanelita] and [appellant], at the Makati Medical Towers where Maricel had her medical examination. [Decena] again met the three accused at their office at No. 4 Sta. Maria Apartment, Better Living Subdivision, Parañaque City when Maricel obtained a copy of her medical certificate. They enticed [Decena] to apply at their agency by showing her job orders that offered \$400 [a] month salary, 150% overtime pay, free board and lodging as well as photographs of prospective Korean employers. [Appellant] even gave her a copy of the job order. The three accused assured [Decena] that they had already sent several applicants for employment abroad. Convinced, [Decena] and her husband Marcelo Rayo applied at their agency. They were instructed to undergo medical examination, to attend a Korean Language seminar, and to pay ₱70,000.00 processing fee.

Thus, on February 15, 2001, [Decena] and her husband each gave accused [Daud] the amount of ₱35,000.00 as placement fees. During trial, [Decena] presented her receipt for ₱35,000.00 which was received and signed by [Daud].

Thereafter, the couple were told to wait for two weeks for the processing of their visas. As two weeks have passed and nothing happened to their applications, [Decena] and her husband went to the POEA to verify the status of the agency. They were informed to the effect that said agency was not licensed to send workers abroad. [Decena] and her husband went back to the agency and tried to look for the accused but they were all gone. They later came to know, through [De Guzman], that [appellant] was apprehended. She identified her sworn statement in court.

Sometime in January 2001, **Francisco Poserio** [(Poserio)] was brought along by his cousin [De Guzman] to No. 4 Sta. Maria Apt., India St., Better Living Subdivision, Barangay Don Bosco, Parañaque City. While thereat, [De Guzman] introduced [Daud], Hanelita and [appellant] as the owners of Green Pastures Worldwide Tours and Consultancy and that they were sending workers to Korea. The three accused encouraged [Poserio] to apply for work in Korea where he could get a job which offered a monthly salary of US\$400 with free meals and housing, 150% pay on overtime work and vacation leave of thirty (30) days in a two-year contract. To convince [Poserio] that they can send workers to Korea, they showed him job orders from Hyundai Group and Nike requiring workers for Korea, a copy of a Korean visa of one of their job applicants, and photos of [Daud] in Korea with a Korean national who would be

[Poserio]'s prospective employer if he applied with their agency. Further, he would be able to earn back his placement fee in three months work.

Enticed, [Poserio] mortgaged his property to get funds for his job application. [Daud] and Hanelita informed him to undergo a medical examination and seminar and even gave him a referral. On January 27, 2001, he gave his passport, medical examination result, seminar result and certification for employment. He was then told to pay ₱100,000.00 as processing fee for his job application. On March 3, 2001, he gave his downpayment of ₱25,000.00 to [Daud] in the presence of Hanelita and [appellant]. He was told to wait for two weeks for the processing of his papers. On July 2001, he was informed that additional amount was needed to process his papers. Thus, on July 5, 2001, he gave ₱45,000.00 as additional payment to [Daud] in the presence of Hanelita. He was again told to wait for another three weeks. He was even promised that they would return his money if he would not be sent abroad. A year after his payment, [Poserio] was still not able to leave the country. Upon verification with the POEA, he and the other job applicants discovered that the said agency was not licensed to recruit workers for overseas employment. He talked over the phone with the accused and demanded the return of his money. When they failed to return his money, he filed a complaint with the Parañaque police.

All three complainants positively identified [appellant] in court.¹⁶ (Citations omitted.)

The Court of Appeals similarly provided a gist of appellant's testimony, thus:

Roderick Gallemit [(appellant)] denied owning the agency, undertaking any recruitment act or receiving any amount from the complainants considering that his name did not appear in the receipts. He admitted that he is married to co-accused [Hanelita] and that co-accused [Daud] is his mother-in-law.

He knew private complainants [De Guzman] and [Poserio] who were introduced to him by [Daud] who was then working as a liaison officer at Jemimah International Manpower Services located in Taft Avenue, Manila. [Appellant] denied knowing the other complainants. He was just brought along by [Daud] since he was also one of the job seekers applying at the Jemimah International Manpower Services where [Daud] worked. [Daud] told him that private complainant [De Guzman] is her business partner. [Poserio] was one of those applying for a job abroad and [De Guzman] would refer them to [Daud]. Thus, [De Guzman] frequented their apartment in Parañaque.

He admitted that, from February 2001 to August 2001, he had been staying at the apartment in India Street, Better Living Subdivision, Parañaque City he shared with his wife Hanelita, their child and his mother-in-law [Daud]. He and his wife were not employed since they were applying for a job abroad. His siblings help him out by sending him money for his job application. He was aware that his mother-in-law [Daud] was a recruiter and owned an agency named Green Pasture Worldwide Travel and Tours which she operated in the same apartment.

¹⁶ *Rollo*, pp. 7-10.

He claimed that [Daud] has only one employee, a certain Badjong, who processed documents. At first he did not apply with [Daud] because her business was still new. He applied with her when she convinced him that she could process his passport and papers to Korea.

He denied he was present when the complainants gave their payments to [Daud]. He insisted that he was not involved with [Daud]'s business and that he was always out of the house as he would often go to Cavite to ask for financial help from his siblings. x x x.¹⁷ (Citations omitted.)

In its Decision dated March 18, 2011, the Court of Appeals affirmed appellant's conviction by the RTC, but modified the indeterminate penalties imposed on appellant for the three counts of estafa. The appellate court decreed:

WHEREFORE, the appealed decision finding accused-appellant **RODERICK GALLEMIT y TOLENTINO** guilty beyond reasonable doubt of *Illegal Recruitment in Large Scale* and of *Estafa* is **AFFIRMED** with modification with respect to the indeterminate penalties imposed on appellant for the three counts of estafa, to wit:

(1) In Criminal Case No. 03-0123, appellant is sentenced to suffer the indeterminate penalty of two (2) years and four (4) months of *prision correccional* as minimum to thirteen (13) years of *reclusion temporal* as maximum.

(2) In Criminal Case No. 03-0127, appellant is sentenced to suffer the indeterminate penalty of two (2) years and four (4) months of *prision correccional* as minimum to nine (9) years of *prision mayor* as maximum.

(3) In Criminal Case No. 03-0130, appellant is sentenced to suffer the indeterminate penalty of two (2) years and four (4) months of *prision correccional* as minimum to twelve (12) years of *prision mayor* as maximum.

In all other respects, the assailed Decision is **AFFIRMED**.¹⁸

Hence, appellant comes before us via the instant appeal with the same assignment of errors which he raised before the Court of Appeals:

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF LARGE-SCALE ILLEGAL RECRUITMENT AND ESTAFA DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

¹⁷ Id. at 10.

¹⁸ Id. at 21.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF ESTAFA DESPITE THE ABSENCE [OF] THE ELEMENT OF DECEIT.

Illegal recruitment in large scale

Appellant anchors his bid for acquittal on the failure of the prosecution to prove that he gave private complainants the distinct impression that he had the power or ability to send them abroad for work such that they were convinced to part with their money. Any encouragement or promise of employment abroad was solely made by Daud. Appellant points out that it was only his alleged presence at the time private complainants were making their payments to Daud that led said private complainants to believe that appellant participated in the recruitment scheme.

The Office of the Solicitor General, as counsel for the appellee, insists that appellant acted in conspiracy with his co-accused in engaging in illegal recruitment activities, specifically performing the following acts: (1) Appellant, together with his co-accused, owned and operated Green Pasture Worldwide Tour and Consultancy Corporation; (2) Appellant, together with his co-accused, encouraged private complainants to apply for jobs abroad with their agency, promising private complainants salary of US\$400.00, 150% overtime pay, and free board and lodging; (3) Appellant, together with his co-accused, assured private complainants that they could leave for Korea within a short period after paying their placement fees; and (4) Appellant was present everytime private complainants made payments to his co-accused Daud. In addition, private complainants De Guzman, Decena, and Poserio positively identified and pointed to appellant in court as one of the persons who recruited them for work abroad.¹⁹

Article 13(b) of the Labor Code defines recruitment and placement as “any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers; and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not.” In the simplest terms, illegal recruitment is committed by persons who, without authority from the government, give the impression that they have the power to send workers abroad for employment purposes.²⁰

Republic Act No. 8042 broadened the concept of illegal recruitment under the Labor Code and provided stiffer penalties, especially for those that constitute economic sabotage, *i.e.*, Illegal Recruitment in Large Scale and Illegal Recruitment Committed by a Syndicate.

¹⁹ CA rollo, pp. 138-139.

²⁰ *People v. Alvarez*, 436 Phil. 255, 265 (2002).

Section 6 of Republic Act No. 8042 defined illegal recruitment as follows:

SEC. 6. *Definition.* - For purposes of this Act, illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or 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* any 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 person, whether a non-licensee, non-holder, licensee or holder of authority:

X X X X

(m) Failure to reimburse expenses incurred by the worker 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 an offense involving economic sabotage.

Illegal recruitment is deemed committed by a syndicate if 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.

To constitute illegal recruitment in large scale, three elements must concur: (a) the offender has no valid license or authority required by law to enable him to lawfully engage in recruitment and placement of workers; (b) the offender undertakes any of the activities within the meaning of "recruitment and placement" under Article 13(b) of the Labor Code, or any of the prohibited practices enumerated under Article 34 of the said Code (now Section 6 of Republic Act No. 8042); and (c) the offender committed the same against three or more persons, individually or as a group.²¹

Both the RTC and the Court of Appeals ruled that all the foregoing elements of illegal recruitment in large scale are present in the case at bar. As the Court of Appeals discussed in detail:

First, neither the agency "Green Pastures World Wide Tours and Consultancy" nor appellant himself had a valid license or authority to engage in the recruitment and placement of workers. This was established by the POEA certification stating that the said agency located in that apartment was not licensed to recruit employees for abroad. 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

²¹ *People v. Gamboa*, 395 Phil. 675, 684 (2000).

or association to engage in recruitment and placement activities as a private recruitment entity. It is the lack of the necessary license or authority that renders the recruitment activity, as in this case, unlawful or criminal.

Second, despite not having such authority, appellant, along with his co-accused, nevertheless engaged in recruitment activities, offering and promising jobs to private complainants and collecting from them various amounts as placement fees. This is substantiated by the respective testimonies of the three private complainants who fell victim to their illegal activities. Marcelo de Guzman testified that appellant was physically present during the time that he and his companions were being shown job orders and while he was paying for the fees for himself and in behalf of his companions. Francisco Poserio testified that appellant was one of those who apprised him of job benefits and tried to convince him to apply for overseas employment through their agency. Gina Decena mentioned that [appellant] even gave her a copy of the job order.

We find no cogent reason to disturb the findings of the lower court that there was conspiracy among the accused in the commission of the offense. Direct proof of previous agreement to commit a crime is not necessary. It may be deduced from the mode and manner in which the offense was perpetrated, or inferred from the acts of the accused which point to a joint purpose and design, concerted action and community of interest. Conspiracy exists where the participants performed specific acts with such closeness and coordination as unmistakably to indicate a common purpose or design in committing the crime.

The testimonies of the complainants on the matter are affirmative in nature and sufficiently corroborative of each other to be less than credible. It would be contrary to human nature and experience for several persons to conspire and accuse appellant of a crime and send him to prison just to appease their feeling of rejection and vindicate the frustration of their dreams to work abroad if all he did was just to reside in the same apartment where his mother-in-law [Daud] operated her recruitment agency. It is in this light that We find any inconsistencies that accused-appellant harps on in the testimonies of the complainants to be inconsequential. What is important is that they have positively identified accused-appellant as one of those who enticed them to part with their money in exchange for promised jobs abroad.

The crime of illegal recruitment, according to the Supreme Court is committed when, among other things, a person, who without being duly authorized according to law, represents or gives the distinct impression that he or she has the power or the ability to provide work abroad convincing those to whom the representation is made or to whom the impression is given to thereupon part with their money in order to be assured of that employment. This is what obtains in this case.

Contrary to appellant's mistaken notion, it is not the issuance or signing of receipts for the placement fees that makes a case for illegal recruitment, but rather the undertaking of recruitment activities without the necessary license or authority. The absence of receipts to evidence payment is not necessarily fatal to the prosecution's cause. A person charged with the illegal recruitment may be convicted on the strength of the testimony of the complainants, if found to be credible and convincing.

Considering the evidence on record, We agree with the trial court that accused-appellant engaged in recruitment of workers which was illegal and in large scale. Illegal recruitment is deemed committed in large scale if committed against three or more persons individually or as a group. In this case, three complainants testified against appellant's acts of illegal recruitment.²² (Citations omitted.)

The Court finds no cogent reason to deviate from the findings and conclusions of the RTC and the Court of Appeals. The prosecution witnesses were positive and categorical in their testimonies that they personally met appellant; that they knew appellant was associated with Green Pasture Worldwide Tour and Consultancy; and that appellant had performed recruitment activities such as promising employment abroad, encouraging job applications, and providing copies of job orders. The private complainants' testimonies are consistent and corroborate one another on material points, such as the amount of the placement fees asked, and the purported country of destination and nature of work.

It was not necessary for the prosecution to still prove that appellant himself received the placement fees from private complainants and issued receipts for the same, given the finding of both the RTC and the Court of Appeals of the existence of conspiracy among appellant and his co-accused Hanelita and Daud, appellant's wife and mother-in-law, respectively. When there is conspiracy, the act of one is the act of all.²³ It is not essential that there be actual proof that all the conspirators took a direct part in every act. It is sufficient that they acted in concert pursuant to the same objective.²⁴

Between the categorical statements of the private complainants, on the one hand, and the bare denial of appellant, on the other hand, the former must perforce prevail. An affirmative testimony is far stronger than a negative testimony especially when the former comes from the mouth of a credible witness. Denial, same as an alibi, if not substantiated by clear and convincing evidence, is negative and self-serving evidence undeserving of weight in law. It is considered with suspicion and always received with caution, not only because it is inherently weak and unreliable, but also because it is easily fabricated and concocted.²⁵

Furthermore, without any evidence to show that private complainants were propelled by any ill motive to testify falsely against appellant, their testimonies deserve full faith and credit. After all, the doctrinal rule is that findings of fact made by the trial court, which had the opportunity to directly observe the witnesses and to determine the probative value of the other testimonies, are entitled to great weight and respect because the trial court is in a better position to assess the same, an opportunity not equally open to the appellate court. The absence of any showing that the trial court plainly

²² *Rollo*, pp. 17-18.

²³ *People v. Gamboa*, supra note 21 at 685.

²⁴ *People v. Gallo*, G.R. No. 187730, June 29, 2010, 622 SCRA 439, 458.

²⁵ *People v. Ocdan*, G.R. No. 173198, June 1, 2011, 650 SCRA 124, 145.

overlooked certain facts of substance and value that, if considered, might affect the result of the case, or that its assessment was arbitrary, impels us to defer to the trial court's determination according credibility to the prosecution evidence.²⁶ This is more true if the findings of the trial court were affirmed by the appellate court, since it is settled that when the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon this Court.²⁷

Given the foregoing, we uphold the conviction of appellant for illegal recruitment in a large scale, which constitutes economic sabotage. The penalty of life imprisonment and the fine of ₱500,000.00, imposed upon appellant for the said offense by the RTC, and affirmed by the Court of Appeals, is in accord with Section 7(b) of Republic Act No. 8042, which provides:

Sec. 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 of not less than Two hundred thousand pesos (₱200,000.00) nor more than Five hundred thousand pesos (₱500,000.00).

(b) The penalty of life imprisonment and a fine of not less than Five hundred thousand pesos (₱500,000.00) nor more than One million pesos (₱1,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined herein. (Emphasis ours.)

Estafa

We likewise affirm the conviction of appellant for three counts of estafa committed against the private complainants in Criminal Case Nos. 03-0123, 03-0127, and 03-0130, based on the very same evidence that proved appellant's criminal liability for illegal recruitment.

It is settled that a person may be charged and convicted separately of illegal recruitment under Republic Act No. 8042, in relation to the Labor Code, and estafa under Article 315, paragraph 2(a) of the Revised Penal Code. As we explained in *People v. Cortez and Yabut*²⁸:

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.

²⁶ *People v. Chua*, G.R. No. 187052, September 13, 2012, 680 SCRA 575, 590.

²⁷ *People v. Basao and Apole*, G.R. No. 189820, October 10, 2012, 683 SCRA 529, 543.

²⁸ 374 Phil. 575, 586 (1999).

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*. (Citations omitted.)

Article 315, paragraph 2(a) of the Revised Penal Code defines estafa as:

Art. 315. *Swindling (estafa)*. - Any person who shall defraud another by any of the means mentioned hereinbelow 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.

The elements of estafa are: (a) that the accused defrauded another by abuse of confidence or by means of deceit, and (b) that damage or prejudice capable of pecuniary estimation is caused to the offended party or third person.²⁹

Appellant contends that he cannot be convicted of estafa because the element of deceit is lacking. He insists on the absence of proof that he made any false statement or fraudulent representation to private complainants.

We are not persuaded. As we had previously discussed herein, private complainants were able to establish, through their positive and credible testimonies, that appellant acted in conspiracy with his co-accused to mislead private complainants into believing that appellant and his co-accused, for a fee, can deploy private complainants abroad for employment. Decena testified that appellant gave her a copy of the purported job order for Korea, while Poserio avowed that appellant encouraged him to apply for work abroad. Daud, appellant's fellow conspirator, accepted placement fees from private complainants, even issuing receipts for some; instructed private complainants to undergo medical examination; and took private complainants' passports. The representations made by appellant and his co-accused to private complainants were actually false and fraudulent, not only because they were not duly authorized to undertake recruitment for overseas employment, but also because there were no actual jobs waiting for private complainants in Korea and private complainants never had a chance to leave for work abroad.

Appellant also argues that the second element of estafa, which is prejudice or pecuniary loss, was not established during trial as the

²⁹ *People v. Ballesteros*, 435 Phil. 205, 228 (2002).

prosecution was unable to present any receipt signed by appellant proving that he received money from private complainants.

We disagree once more with appellant. We reiterate that when conspiracy has been established, the act of one conspirator is the act of all. All three private complainants testified that they paid placement fees to Daud, who issued receipts for some amounts either in her name or in the name of one "Nimfa Min." Moreover, the payment of placement fees to illegal recruiters is not evidenced by receipts alone; it can also be established by testimonies of witnesses. In *People v. Pabalan*,³⁰ we held:

Although not all of the amounts testified to by complainants were covered by receipts, the fact that there were no receipts for some of the amounts delivered to him does not mean that appellant did not accept or receive such payments. This Court has ruled in several cases that the absence of receipts in a criminal case for illegal recruitment does not warrant the acquittal of the accused and is not fatal to the case of the prosecution. As long as the witnesses had positively shown through their respective testimonies that the accused is the one involved in the prohibited recruitment, he may be convicted of the offense despite the want of receipts.

The Statute of Frauds and the rules of evidence do not require the presentations of receipts in order to prove the existence of a recruitment agreement and the procurement of fees in illegal recruitment cases. The amounts may consequently be proved by the testimony of witnesses. (Citation omitted.)

Again, there is no cogent reason for us to disturb the finding of the RTC, affirmed by the Court of Appeals, that both elements of estafa are present in Criminal Case Nos. 03-0123, 03-0127, and 03-0130. Thus, we sustain appellant's conviction for estafa, punishable under Article 315, paragraph 2(a), of the Revised Penal Code.

The penalty for estafa depends on the amount of defraudation. Per Article 315 of the Revised Penal Code:

Art. 315. *Swindling (estafa)*. – Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

1st. The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos; and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be[.]

³⁰ 331 Phil. 64, 77-78 (1996).

The prescribed penalty for estafa under Article 315 of the Revised Penal Code, when the amount of the fraud is over ₱12,000.00 but not exceeding ₱22,000.00, is *prision correccional* maximum to *prision mayor* minimum (*i.e.*, from 4 years, 2 months, and 1 day to 8 years). Under the Indeterminate Sentence Law, the minimum term shall be within the range of the penalty next lower to that prescribed by the Revised Penal Code, or anywhere within *prision correccional* minimum and medium (*i.e.*, from 6 months and 1 day to 4 years and 2 months).³¹ Consequently, the minimum terms in Criminal Case Nos. 03-0123, 03-127, and 03-0130 were correctly fixed by the RTC, and affirmed by the Court of Appeals, at 2 years and 4 months of *prision correccional*.

The maximum term under the Indeterminate Sentence Law shall be that which, in view of attending circumstances, could be properly imposed under the rules of the Revised Penal Code. To compute the minimum, medium, and maximum periods of the prescribed penalty for estafa when the amount of fraud exceeds ₱12,000.00, the time included in *prision correccional* maximum to *prision mayor* minimum shall be divided into three equal portions, with each portion forming a period. Following this computation, the minimum period for *prision correccional* maximum to *prision mayor* minimum is from 4 years, 2 months, and 1 day to 5 years, 5 months, and 10 days; the medium period is from 5 years, 5 months, and 11 days to 6 years, 8 months, and 20 days; and the maximum period is from 6 years, 8 months, and 21 days to 8 years. Any incremental penalty (*i.e.*, one year for every ₱10,000.00 in excess of ₱22,000.00) shall thus be added to anywhere from 6 years, 8 months, and 21 days to 8 years, at the discretion of the court, provided that the total penalty does not exceed 20 years.³²

In Criminal Case Nos. 03-0123, 03-127, and 03-0130, the maximum term shall be taken from the maximum period of the prescribed penalty, which is 6 years, 8 months, and 21 days to 8 years. The Court of Appeals fixed the maximum term at 8 years.

But then, since private complainants were defrauded in the amounts exceeding ₱22,000.00, incremental penalty shall be imposed upon appellant, determined as follows:

Criminal Case No. (Private Complainant)	Amount Defrauded	Difference After Subtracting ₱22,000.00	Quotient After Dividing by ₱10,000.00	Incremental Penalty³³
03-0123 (De Guzman)	₱80,000.00	₱58,000.00	5.8	5 years

³¹ *People v. Temporada*, 594 Phil. 680, 714-715 (2008).

³² *Id.*

³³ Amounts less than ₱10,000.00 are already disregarded.

03-0127 (Decena)	₱35,000.00	₱13,000.00	1.3	1 year
03-130 (Poserio)	₱70,000.00	₱48,000.00	4.8	4 years

The incremental penalty shall be added to the maximum term of 8 years fixed by the Court of Appeals. Thus, we agree with the Court of Appeals in imposing the maximum penalty in Criminal Case No. 03-0123 at thirteen (13) years of *reclusion temporal*; in Criminal Case No. 03-0127 at nine (9) years of *prision mayor*; and in Criminal Case No. 03-0130 at twelve (12) years of *prision mayor*.

Lastly, it is still incumbent upon appellant to indemnify private complainants for the amounts paid to him and his conspirators, with legal interest at the rate of 6% per annum, from the time of demand, which, in this case, shall be deemed as the same day the Informations were filed against appellant, until the said amounts are fully paid.³⁴

WHEREFORE, we **AFFIRM with MODIFICATIONS** the Decision dated March 18, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03168, to read as follows:

1. In Criminal Case No. 03-0122, appellant Roderick T. Gallemmit is found **GUILTY** beyond reasonable doubt of illegal recruitment in large scale, constituting economic sabotage, as defined and penalized in Section 6, in relation to Section 7(b), of Republic Act No. 8042, for which he is sentenced to suffer the penalty of life imprisonment and is ordered to pay a fine of Five Hundred Thousand Pesos (₱500,000.00);

2. In Criminal Case No. 03-0123, appellant Roderick T. Gallemmit is found **GUILTY** beyond reasonable doubt of the crime of estafa, as defined and penalized in Article 315, paragraph 2(a) of the Revised Penal Code, for which he is sentenced to a prison term of two (2) years and four (4) months of *prision correccional*, as minimum, to thirteen years (13) of *reclusion temporal*, as maximum, and ordered to indemnify private complainant Marcelo I. De Guzman in the amount of Eighty Thousand Pesos (₱80,000.00) as actual damages, with legal interest of six percent (6%) per annum from January 3, 2003, until the said amount is fully paid;

3. In Criminal Case No. 03-0127, appellant Roderick T. Gallemmit is found **GUILTY** beyond reasonable doubt of the crime of estafa, as defined and penalized in Article 315, paragraph 2(a) of the Revised Penal

³⁴ *People v. Ballesteros*, supra note 29 at 231-232. In *Nacar v. Gallery Frames* (G.R. 189871, August 13, 2013, 703 SCRA 439, 458), interest rates on loan or forbearance of money where none is stipulated is fixed at 6% per annum to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provision of Article 1169 of the Civil Code. In addition, when the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest shall be 6% per annum from such finality until its satisfaction.

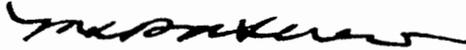
Code, for which he is sentenced to a prison term of two (2) years and four (4) months of *prision correccional*, as minimum, to nine (9) years of *prision mayor*, as maximum, ordered to indemnify private complainant Gina T. Decena in the amount of Thirty-Five Thousand Pesos (₱35,000.00) as actual damages, with legal interest of six percent (6%) per annum from January 3, 2003, until the said amount is fully paid; and

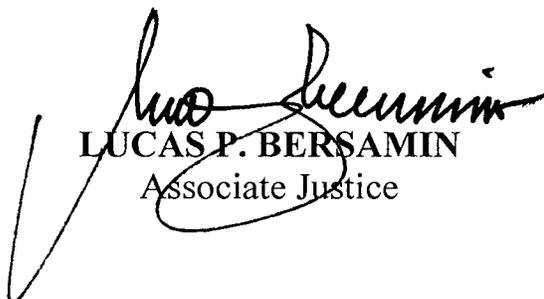
4. In Criminal Case No. 03-0130, appellant Roderick T. Gallemit is found **GUILTY** beyond reasonable doubt of the crime of estafa, as defined and penalized in Article 315, paragraph 2(a) of the Revised Penal Code, for which he is sentenced to a prison term of two (2) years and four (4) months of *prision correccional*, as minimum, to twelve (12) years of *prision mayor*, as maximum, and ordered to indemnify private complainant Francisco S. Poserio in the amount of Seventy Thousand Pesos (₱70,000.00) as actual damages, with legal interest of six percent (6%) per annum from January 3, 2003, until the said amount is fully paid.

SO ORDERED.


TERESITA J. LEONARDO-DE CASTRO
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson



LUCAS P. BERSAMIN
Associate Justice



MARTIN S. VILLARAMA, JR.
Associate Justice



BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice