



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,  
Appellee,

G.R. No. 187160

Present:

CARPIO, J., Chairperson,  
PERALTA,  
MENDOZA,  
LEONEN, and  
MARTIRES, JJ.

- versus -

ERLINDA A. SISON @  
"MARGARITA S. AGUILAR,"  
Appellant.

Promulgated:

09 AUG 2017

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DECISION

CARPIO, J.:

The Case

Before the Court is an appeal by Erlinda A. Sison (Sison) from the 6 November 2008 Decision<sup>1</sup> of the Court of Appeals in CA-G.R. CR-H.C. No. 02833. The Court of Appeals affirmed the 8 May 2007 Joint Decision<sup>2</sup> of the Regional Trial Court of Mandaluyong City, Branch 211 (RTC) finding Sison guilty beyond reasonable doubt of (1) violation of Section 6, in relation to Section 7, of Republic Act No. 8042 (RA 8042), or illegal recruitment involving economic sabotage, and (2) estafa under Article 315 of the Revised Penal Code (RPC).

The Facts

Sometime in November or December 1999, Darvy<sup>3</sup> M. Castuera (Castuera) was introduced to Sison by her husband, a certain Col. Alex

<sup>1</sup> Rollo, pp. 2-21. Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Japar B. Dimaampao and Sixto C. Marella, Jr. concurring.

<sup>2</sup> CA rollo, pp. 22-35. Penned by Judge Paulita B. Acosta-Villarante.

<sup>3</sup> Referred to in some parts of the records as "Darby."

Sison (Col. Sison), a police officer assigned at Camp Crame, Quezon City. Castuera's aunt, Edna Magalona, was then teaching police officers at Camp Crame and Col. Sison was one of her students. Col. Sison happened to mention that his wife can facilitate papers for workers in Australia. Castuera and Magalona then proceeded to Col. Sison's home in Las Piñas. There, they met Sison and she briefed Castuera on the requirements for working as a fruit picker in Australia.<sup>4</sup>

During that meeting, Sison introduced Castuera to another man who related that he was able to go to Australia with Sison's help. She also showed Castuera pictures of other people she had supposedly helped to get employment in Australia. Sison further narrated that a couple she had helped had given her their car as payment. Because of Sison's representations, Castuera believed in her promise that she could send him to Australia.<sup>5</sup>

Sison asked Castuera for ₱180,000 for processing his papers. After some negotiations, Sison agreed to lower the fee to ₱160,000. Castuera was to pay half before he leaves the Philippines and the other half will be taken from his salary in Australia.<sup>6</sup>

On 16 June 2000, Castuera met Sison at McDonald's in SM Megamall to give the ₱80,000 down payment. Sison issued a signed document as proof of payment. Castuera's companions, his aunt Edna Magalona and cousin Mark Magalona, also signed the document as witnesses. Sison promised Castuera that she would personally process his visa application.<sup>7</sup>

Sison, however, failed to secure an Australian visa for Castuera. She told him that it was difficult to get an Australian visa in the Philippines so they had to go to Malaysia to get one. She also said that Castuera's Australian visa was already in Malaysia and his personal appearance was required there.<sup>8</sup>

On 28 June 2008, Sison and Castuera left Manila for Zamboanga City by plane and from there, rode a boat to Sandakan, Malaysia. Sison told Castuera that he only needed to stay in Malaysia for a week then he would proceed to Australia.<sup>9</sup>

Twice, they nearly overstayed in Malaysia. Each time, Sison and Castuera would leave for Brunei, stay there for three days, and then go back to Malaysia. The second time they returned to Malaysia, they met several of

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<sup>4</sup> *Rollo*, p. 5.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 6.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 6-7.



Sison's other recruits – other Filipinos who have come in through Thailand – as well as Sison's co-accused, Rea Dedales (Dedales) and Leonardo Bacomo (Bacomo). Castuera was told that the group would be proceeding to Indonesia to process their Australian visas there. The group then left for Indonesia. However, the day after arriving in Indonesia, Sison went back to the Philippines, leaving Castuera and the other recruits with Dedales and Bacomo.<sup>10</sup>

Subsequently, Castuera's application for an Australian visa in Indonesia was denied.<sup>11</sup> Dedales said it was harder to get an Australian visa from Indonesia and told Castuera to apply for a U.S. visa instead. Dedales asked for US\$1,000 for the processing of his U.S. visa, which he paid.<sup>12</sup> However, when his U.S. visa came, Castuera saw that it was in an Indonesian passport bearing an Indonesian name. Because of this, Castuera decided to just return to the Philippines. He asked for his US\$1,000 back but Dedales would not return it. His Philippine passport was also not returned immediately causing him to overstay in Indonesia. He found out then that the extension papers that Dedales and Bacomo procured for him were fake.<sup>13</sup>

Castuera sought the help of the Philippine Embassy in Indonesia and was able to return to the Philippines using his own funds.<sup>14</sup>

Upon returning to the Philippines, Castuera filed a complaint against Sison, Dedales, and Bacomo at the Philippine Overseas Employment Administration (POEA). The agency verified that Sison, Dedales, and Bacomo did not have any license or permit to hire and recruit for overseas employment.<sup>15</sup>

During the trial, Sison denied that she recruited Castuera for employment. She maintained she was also a victim of illegal recruitment by Dedales.<sup>16</sup> She claimed that it was Dedales, then working for a travel agency, who was processing her visa and ticket to Australia. She further claimed that she accepted the down payment money from Castuera because Dedales was already in Malaysia at that time. When she and Castuera arrived in Malaysia, she gave the money to Dedales. Like Castuera, she found out when they arrived in Malaysia that her Australian visa application had been denied. She also said that Dedales asked her for an additional US\$1,000, which she gave.

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<sup>10</sup> Id. at 7; CA *rollo*, pp. 24-25.

<sup>11</sup> *Rollo*, p. 7.

<sup>12</sup> CA *rollo*, p. 25.

<sup>13</sup> *Rollo*, pp. 7-8.

<sup>14</sup> Id. at 8.

<sup>15</sup> Id.

<sup>16</sup> Id. at 10.

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However, upon learning that it was difficult to get an Australian visa, Sison opted to go back to the Philippines. When Dedales and Bacomo informed her that Castuera had been issued a U.S. visa, Sison supposedly told them to apply the US\$1,000 she paid to Castuera's payment.

### **The RTC's Joint Decision**

In its 8 May 2007 Joint Decision, the RTC found Sison guilty of illegal recruitment constituting economic sabotage and estafa:

WHEREFORE, the court finds the accused ERLINDA SISON guilty beyond reasonable doubt of the offenses charged and hereby sentences her, thus:

- 1) In Criminal Case No. MC01-4035-H for Violation of Section 6 in relation to Section 7 of R.A. 8042 (Illegal Recruitment-Economic Sabotage) to suffer the penalty of life imprisonment pursuant to Section 6 (m) of R.A. 8042 in relation to Section 7 (b) thereof and to pay a fine of One Million Pesos (Php1,000,000.00) as the illegal recruitment constitutes economic sabotage;
- 2) In Criminal Case No. MC01-4036 for Estafa under Article 315 (2) (a) of the Revised Penal Code (RPC), to suffer the penalty of four years, two (2) months of prision correccional as minimum to eight (8) years of prision mayor as maximum.

The accused is ordered to indemnify the victim, Darby Castuera, the sum of Php160,000.00 as actual damages.

In so far as accused Rea Dedales and Leonardo Bacomo are concerned, who have been fugitives from justice and are not yet arraigned, let bench warrants issue against them. Accordingly, the cases against them are ordered archived until such time that they shall have been arrested and arraigned.

SO ORDERED.<sup>17</sup>

The RTC stated it was clear that Sison convinced Castuera to apply for employment as fruit picker in Australia and induced him to pay the fees needed for overseas employment.<sup>18</sup>

The RTC also held that Castuera was indeed "a victim of illegal recruitment committed by a syndicate"<sup>19</sup> since it was committed by a group of three persons acting "in conspiracy" with one another.<sup>20</sup> According to the

<sup>17</sup> CA rollo, pp. 34-35.

<sup>18</sup> Id. at 30-31.

<sup>19</sup> Id. at 32.

<sup>20</sup> Id. at 30.



RTC, the conduct of Sison and her co-accused showed that they acted “in concert towards the accomplishment of a common felonious purpose which was to recruit [Castuera] for overseas employment even though they had no license to do so.”<sup>21</sup>

As to the estafa charge, the RTC held that Sison and her co-accused were also guilty of the same. The RTC pointed out that the element of deceit was evident in the “false pretenses by which accused deluded [Castuera] into believing that they ha[ve] the power and qualifications to send people abroad for employment” and which induced him to pay them ₱110,000 and US\$1,000.<sup>22</sup>

The RTC also rejected Sison’s claim that she was also a victim like Castuera. The RTC stated that if that were true, then Sison should have filed a case against the illegal recruiter, but she did not. It also held that Castuera’s positive and categorical testimony prevailed over Sison’s mere denials.<sup>23</sup>

### **The Decision of the Court of Appeals**

Sison appealed the joint decision of the RTC to the Court of Appeals.

She maintained that she was also a victim of her co-accused Dedales<sup>24</sup> and that there was “no material and concrete proof that indeed [she] offered or promised for a fee employment abroad to two (2) or more persons.”<sup>25</sup> According to Sison, Castuera merely sought her out to “enable him to transact with accused Dedales”<sup>26</sup> who would facilitate his application for an Australian visa. She claimed that there was no proof beyond reasonable doubt that her transaction with Castuera was for recruitment or deployment to Australia.<sup>27</sup>

Sison did not dispute her lack of license or authority to conduct recruitment activities. However, she maintained that the transaction she facilitated between Castuera and Dedales was “only for the former to secure a visa, not a working visa.” Further, she argued that the procurement of a visa did not qualify as a “recruitment activity.”<sup>28</sup>

Sison also contested the ruling that she was guilty of estafa, claiming that she “did not fraudulently or falsely [represent] herself to possess the

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<sup>21</sup> Id. at 32.

<sup>22</sup> Id. at 33.

<sup>23</sup> Id.

<sup>24</sup> Id. at 60.

<sup>25</sup> Id.

<sup>26</sup> Id. at 61.

<sup>27</sup> Id.

<sup>28</sup> *Rollo*, p. 10.



power, capacity or authority to recruit and deploy [Castuera] for overseas employment.”<sup>29</sup>

In its assailed decision, the Court of Appeals upheld the RTC’s joint decision:

WHEREFORE, the instant appeal is DISMISSED for lack of merit. The decision of the court *a quo* dated May 8, 2007 is AFFIRMED. Costs against the accused-appellant.

SO ORDERED.<sup>30</sup>

The Court of Appeals held that all the elements of illegal recruitment were sufficiently proven in the case.

First, Sison herself did not dispute that she is not licensed or authorized to engage in recruitment or placement activities. This fact was unknown to Castuera at the time of their transaction.<sup>31</sup>

Second, the Court of Appeals held that even if Sison did not directly recruit Castuera, her actions led him to believe that she was engaged in the recruitment business.<sup>32</sup> Castuera was able to prove that it was Sison who promised him a job as fruit picker in Australia and even accompanied him to Malaysia, Brunei, and Indonesia in the guise of processing his visa application. However, the Court of Appeals noted that this process was actually part of “defrauding [Castuera] and inveigling him with false or fraudulent promises of employment in a foreign land.”<sup>33</sup>

Further, the Court of Appeals found that Sison made representations about her purported power and authority to recruit for employment in Australia and, in the process, collected various amounts of money from Castuera as placement and processing fees.<sup>34</sup> The Court of Appeals stated that it was “enough that these recruiters give the impression that they have the ability to enlist workers for job placement abroad in order to induce the latter to tender payment of fees.”<sup>35</sup>

The Court of Appeals further held that the illegal recruitment activities of Sison and her co-accused constituted economic sabotage. It underscored that “active participation of each [accused] in the various phases of the recruitment scam formed part of a series of machinations” which lured Castuera to part with his hard earned money in exchange for

<sup>29</sup> CA rollo, p. 64.

<sup>30</sup> Rollo, p. 20.

<sup>31</sup> Id. at 12.

<sup>32</sup> Id. at 14.

<sup>33</sup> Id.

<sup>34</sup> Id.

<sup>35</sup> Id. at 15.

guaranteed employment in Australia.<sup>36</sup> The Court of Appeals noted that Castuera would not have gone along with traveling to Malaysia, Brunei, and Indonesia and complying with Sison's further demands without the repeated assurances of the latter.<sup>37</sup>

The Court of Appeals also affirmed Sison's conviction for estafa. It held that the two elements of estafa were proven in the case. The Court of Appeals found that Sison's misrepresentations facilitated the commission of the crime. Sison deliberately misrepresented that she had the power, capacity, or means to send Castuera to Australia. The Court of Appeals concluded that Sison defrauded Castuera through deceit.<sup>38</sup>

Sison appealed the Court of Appeals' decision to this Court via a Notice of Appeal dated 25 November 2008.<sup>39</sup>

### The Issue

The lone issue in this case is whether the guilt of Sison was established beyond reasonable doubt.

### The Court's Ruling

The appeal has no merit. The assailed decision of the Court of Appeals is affirmed, with modification as to the penalty imposed in the estafa case.

### **Illegal Recruitment by a Syndicate – Economic Sabotage**

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

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<sup>36</sup> Id.

<sup>37</sup> Id. at 17.

<sup>38</sup> Id. at 18.

<sup>39</sup> CA *rollo*, p. 131.



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.

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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

Sec. 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-license 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-license 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.

- (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 of placement of workers in jobs harmful to public health or morality or to dignity of the Republic of the Philippines;

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- (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. (Emphasis supplied)

Simply put, **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."<sup>40</sup>

Illegal recruitment may be undertaken by either non-license or license holders. Non-license holders are liable by the simple act of engaging in

<sup>40</sup> *People v. Arnaiz*, G.R. No. 205153, 9 September 2015, 770 SCRA 319.



recruitment and placement activities, while license holders may also be held liable for committing the acts prohibited under Section 6 of RA 8042.

Under RA 8042, a non-licensee or non-holder of authority commits illegal recruitment for overseas employment in two ways: (1) by 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; or (2) by undertaking any of the acts enumerated under Section 6 of RA 8042.<sup>41</sup>

In this case, Sison herself admits that she has no license or authority to undertake recruitment and placement activities. The Court has held in several cases that an accused who represents to others that he or she could send workers abroad for employment, even without the authority or license to do so, commits illegal recruitment.<sup>42</sup>

It is the absence of the necessary license or authority to recruit and deploy workers that renders the recruitment activity unlawful. To prove illegal recruitment, it must be shown that “the accused gave the complainants the distinct impression that she had the power or ability to deploy the complainants abroad in a manner that they were convinced to part with their money for that end.”<sup>43</sup>

On the other hand, illegal recruitment committed by a syndicate, as in the present case, has the following elements: (a) the offender does not have the valid license or authority required by law to engage in recruitment and placement of workers; (b) the offender undertakes any of the “recruitment and placement” activities defined in Article 13(b) of the Labor Code, or engages in any of the prohibited practices enumerated under now Section 6 of RA 8042; and (c) the illegal recruitment is “carried out by a group of three or more persons conspiring and/or confederating with one another in carrying out any unlawful or illegal transaction, enterprise or scheme.”<sup>44</sup> In the third element, 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.”<sup>45</sup>

The acts of Sison, Dedales, and Bacomo show a common purpose and each undertook a part to reach their objective. Their concerted action is evident in that either Sison or Dedales was receiving payments from the recruits; that Dedales signed the acknowledgment receipt from Sison; and that the three accompanied their recruits together in seeking out their visas in

<sup>41</sup> *People v. Tolentino*, G.R. No. 208686, 1 July 2015, 761 SCRA 332.

<sup>42</sup> *Id.*, citing *People v. Inovero*, 737 Phil. 116, 126 (2014); *People v. Lalli*, 675 Phil. 126, 152 (2011); *People v. Abat*, 661 Phil. 127, 132-133 (2011).

<sup>43</sup> *People v. Abat*, 661 Phil. 127, 132 (2011).

<sup>44</sup> *People v. Fernandez*, 735 Phil. 340, 345 (2014).

<sup>45</sup> *People v. Daud*, 734 Phil. 698, 717-718 (2014).



Malaysia and Indonesia. Further, the impression given to Castuera and other recruits was that the three were indeed working together.

Since it was proven that the three accused were acting in concert and conspired with one another, their illegal recruitment activity is considered done by a syndicate, making the offense illegal recruitment involving economic sabotage.

Section 7 of RA 8042 sets out the penalty for illegal recruitment involving economic sabotage:

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 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.**

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. (Emphasis supplied)

The RTC rejected Sison's claim that she was also a victim of illegal recruitment. The courts do not look favorably at denial as a defense since "[d]enial, 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."<sup>46</sup> Denial "does not prevail over an affirmative assertion of the fact."<sup>47</sup>

Sison's defense of denial is merely an attempt to avoid liability. The Court agrees with the RTC's assessment that Sison's claim that she is also a victim of illegal recruitment has no credence.

It is hard to believe that Castuera would deal with Sison in the manner that he had if he believed that she was also a mere recruit like himself. For one thing, there is no proof of Sison's transactions with Dedales, except for a handwritten acknowledgment receipt,<sup>48</sup> which is only backed up by her own

<sup>46</sup> Id., citing *People v. Oden*, 665 Phil. 268, 289 (2011).

<sup>47</sup> *People v. Inovero*, supra note 42, at 127 (2014).

<sup>48</sup> Records, p. 252.



testimony. Also, if she were a victim, she would have taken action against Dedales and Bacomo herself. Her husband was a member of the Philippine National Police. It would have been easy to seek help in apprehending the illegal recruiters. Sison also failed to explain why she took no action to recover the ₱100,000 she allegedly paid for her Australian visa, as well as the money to travel and stay in Malaysia, Brunei, and Indonesia. Lastly, why would she have allowed, as she claims, the US\$1,000 she allegedly paid to be applied to the U.S. visa application of Castuera, someone she says she hardly knows, instead of trying to recover the same, considering that Dedales failed to procure the visa for which she paid? All these cast doubt on her claim of being only a victim of Dedales.

At the very least, Sison gave the impression that she had some sort of authority, whether or not Dedales is indeed the principal, which is enough to amount to illegal recruitment. In any case, the acknowledgment receipts<sup>49</sup> only serve to strengthen the case of conspiracy among Sison and her co-accused.

### Estafa

We affirm Sison's conviction for estafa under Article 315(2)(a) of the RPC. It is settled that a person, for the same acts, may be convicted separately for illegal recruitment under RA 8042 and estafa under Article 315(2)(a) of the RPC. In *People v. Daud*, the Court 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*.<sup>50</sup> (Citations omitted)

The elements of estafa by means of deceit under Article 315(2)(a) of the RPC are:

- (a) that there must be a false pretense or fraudulent representation as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions;
- (b) that such false pretense or fraudulent representation was made or executed prior to or simultaneously with the

<sup>49</sup> Id. at 252-253.

<sup>50</sup> *People v. Daud*, supra note 45, at 720, citing *People v. Yabut*, 374 Phil. 575, 586 (1999).

commission of the fraud; (c) that the offended party relied on the false pretense, fraudulent act, or fraudulent means and was induced to part with his money or property; and (d) that, as a result thereof, the offended party suffered damage.<sup>51</sup>

All these elements are present in this case.

*First*, Sison misrepresented her qualifications and authority to send Castuera to work in Australia. She actively made Castuera believe that she had the ability to do so – she showed pictures of her “recruits,” had one of them give a testimonial, and told him stories to convince him of such ability. It did not matter that “they had no agreement”<sup>52</sup> that their transaction was for recruitment or deployment. All her acts were calculated to convince Castuera that Sison was qualified to send him abroad for employment. It is enough that she “gave the impression that [she] had the power to send workers abroad for employment purposes.”<sup>53</sup>

*Second*, Sison’s false representation was made prior to or simultaneous to the commission of the fraud. Sison used these false representations to convince Castuera that he would be able to go to Australia and be a fruit picker, just like her other recruits. These representations were clearly mere devices to convince Castuera, whom she only met at that time, that she was a legitimate recruiter.

*Third*, Castuera relied on Sison’s representations. He believed that she could send him to Australia because of the pictures and testimonials she showed him. He also relied on the fact that his aunt knew Sison’s husband, a police officer, adding to her trustworthiness. Sison banked on that trust to convince Castuera to part with his money and be “recruited” into overseas employment. Castuera believed that Sison had the same ability to send him to Australia. He did not even ask for her authority or check for himself with the POEA, relying instead on her word. This tells us that he was fully convinced based on Sison’s representations.

*Fourth*, Sison’s misrepresentation resulted in damage to Castuera. He paid the ₱80,000 down payment that Sison required of him as processing fee, but the purpose for which it was paid never materialized. Likewise, said amount was never reimbursed to Castuera despite his demands for its return.

### Penalty

The penalty for illegal recruitment is correct based on Section 7 of RA 8042. Since the illegal recruitment was committed by a non-licensee or non-

<sup>51</sup> *Suliman v. People*, 747 Phil. 719, 731 (2014). Citations omitted.

<sup>52</sup> *Rollo*, p. 10.

<sup>53</sup> *People v. Arnaiz*, supra note 40.

holder of authority, the RTC may rightfully mete out the maximum penalty. Thus, the penalty imposed by the RTC stands.

The penalty for estafa, however, needs to be modified.

Article 315 of the RPC provides:

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

*Ist.* 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 under the provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.

The *Indeterminate Sentence Law* should be applied in determining the penalty for estafa. Under this law, the maximum term is “that which, in view of the attending circumstances, could be properly imposed under [the RPC]” and the minimum shall be “within the range of the penalty next lower to that prescribed by the [RPC] for the offense.”<sup>54</sup>

Applying the *Indeterminate Sentence Law*, “the minimum term is taken from the penalty next lower or anywhere within *prision correccional* minimum and medium (*i.e.*, from 6 months and 1 day to 4 years and 2 months). On the other hand, the maximum term is taken from the prescribed penalty of *prision correccional* maximum to *prision mayor* minimum in its maximum period, adding 1 year of imprisonment for every ₱10,000.00 in excess of ₱22,000.00, provided that the total penalty shall not exceed 20 years.”<sup>55</sup>

In *People v. Tolentino*, the Court further explained:

The range of penalty under Article 315 is composed of only two periods. To compute the maximum period of the indeterminate sentence, the total number of years included in the two periods should be divided into three equal portions, with each portion forming a period. Following this computation, the minimum, medium, and maximum periods of the prescribed penalty are:

1. Minimum Period - 4 years, 2 months and 1 day to 5 years, 5 months and 10 days;
2. Medium Period - 5 years, 5 months and 11 days to 6 years, 8 months and 20 days;
3. Maximum Period - 6 years, 8 months and 21 days to 8 years.

<sup>54</sup> Section 1, Act No. 4103, as amended (*Indeterminate Sentence Law*).

<sup>55</sup> *People v. Fernandez*, supra note 44, at 347.

Any incremental penalty, i.e. one year for every ₱10,000 in excess of ₱22,000, shall be added to anywhere from 6 years, 8 months and 21 days to 8 years, at the court's discretion, provided the total penalty does not exceed 20 years.<sup>56</sup>

To arrive at the correct penalty, the Court must determine the actual amount defrauded from the victim.

Actual damages must be proven, not presumed.<sup>57</sup> It should be "actually proven with a reasonable degree of certainty, premised upon competent proof or the best evidence obtainable."<sup>58</sup>

Based on the evidence and testimony of Castuera, he only paid ₱80,000 as down payment because, under their agreement, the balance of the placement fee was to be deducted from his salary when he starts working in Australia. Thus, there is no basis for the ₱160,000 awarded by the RTC.

Based on the foregoing, the minimum penalty should be anywhere from 6 months and 1 day of *prision correccional* in its minimum period to 4 years and 2 months of *prision correccional* in its medium period. Thus, the RTC was correct in imposing the minimum penalty of 4 years and 2 months of *prision correccional*.

However, the maximum period should be computed as the maximum period that could be properly imposed under the RPC, **plus the incremental penalty** resulting from each additional ₱10,000 in excess of ₱22,000 that was defrauded from the victim.

In this case, the amount is ₱80,000, which means that there must be five more years of imprisonment added to the maximum period imposed by the RPC. Thus, the maximum period should be **13 years of *reclusion temporal***.

Lastly, Sison is ordered to pay legal interest of 6% *per annum* on the amount adjudicated, to be reckoned from the finality of this Decision until full payment.

**WHEREFORE**, the appeal is **DISMISSED**. The Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02833 is **AFFIRMED with MODIFICATION**. In Criminal Case No. MC01-4036 for Estafa under Article 315(2)(a) of the Revised Penal Code, appellant Erlinda A. Sison is sentenced to suffer the penalty of four (4) years and two (2) months of *prision correccional* as minimum to thirteen (13) years of *reclusion*

<sup>56</sup> *People v. Tolentino*, supra note 41.

<sup>57</sup> *Republic v. Tuvera*, 545 Phil. 21, 57 (2007).

<sup>58</sup> *Spouses Quisumbing v. Manila Electric Company*, 429 Phil. 727, 747 (2002). Citations omitted.

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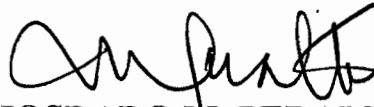
*temporal* as maximum. Sison is also **ORDERED** to pay Darvy M. Castuera the amount of ₱80,000 as actual damages, with legal interest at the rate of 6% *per annum* from the finality of this Decision until the amount is fully paid.

**SO ORDERED.**



**ANTONIO T. CARPIO**  
Associate Justice

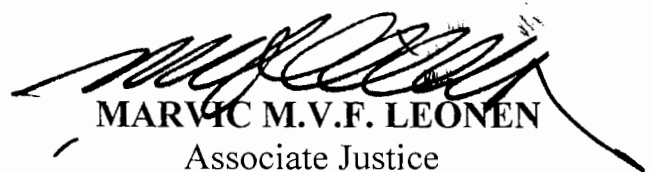
**WE CONCUR:**



**DIOSDADO M. PERALTA**  
Associate Justice



**JOSE CATRAL MENDOZA**  
Associate Justice



**MARVIC M.V.F. LEONEN**  
Associate Justice

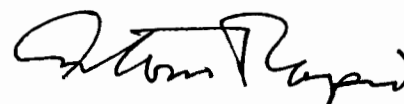


**SAMUEL R. MARTIRES**  
Associate Justice



### ATTESTATION

I attest 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.



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson

### CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, 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