



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

ADRIANO TOSTON y HULAR,  
*Petitioner,*

G.R. No. 232049

Present:

CAGUIOA,  
*Acting Chairperson,*  
CARANDANG,  
ZALAMEDA,  
GAERLAN, *and*  
ROSARIO,\* *JJ.*

- versus -

PEOPLE OF THE PHILIPPINES,  
*Respondent.*

Promulgated:  
MAR 03 2021

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DECISION

GAERLAN, *J.:*

This resolves the petition for review filed by Adriano Toston y Hular (Toston) against the affirmance<sup>1</sup> by the Court of Appeals (CA) of his conviction<sup>2</sup> for estafa and illegal recruitment, as defined and penalized in Article 315(2) of the Revised Penal Code, and Republic Act (R.A.) No. 8042 in relation to the Labor Code.

The Antecedents

Toston, among others, was charged on March 26, 2013 with estafa and illegal recruitment in separate Informations which read:

\* Peralta, *C.J.*, *no part*; vice Rosario, *J.*, *designated additional Member per Raffle dated February 17, 2021.*

<sup>1</sup> Decision of the Court of Appeals in CA-G.R. CR No. 38408, dated December 28, 2016. Penned by Associate Justice Jane Aurora C. Lantion (now retired), with Associate Justices Fernanda Lampas-Peralta and Nina G. Antonio-Valenzuela concurring. *Rollo*, pp. 51-67.

<sup>2</sup> Judgment dated June 29, 2015 in Criminal Case Nos. 14-303962-63. Rendered by Presiding Judge Marivic T. Balisi-Umali of the Regional Trial Court of Manila, Branch 20. Records, pp. 295-302.

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In Criminal Case No. 14-303962:

x x x x

That on or about June 19, 2010, in the City of Manila, Philippines, the said accused, representing themselves to have the capacity to contract, enlist and transport "Filipino Workers" for employment abroad, did then and there willfully and unlawfully, for a fee, recruit and promise employment/job placement abroad to Singapore as waitress, to MARY ANN O. SOLIVEN, without first having secured the required license or authority from the Department of Labor and Employment, and received the amount of Php50,000.00 as processing fee but failed to actually deploy said worker and failed to reimburse worker of the said amount in connection with said deployment of Mary Ann O. Soliven.

Contrary to law.

In Criminal Case No. 14-303963:

x x x x

That on or about July 7, 2010, in the City of Manila, Philippines, the said accused, conspiring, confederating and mutually helping each other did then and there willfully, unlawfully, feloniously defraud MARY ANN O. SOLIVEN, in the following manner: the said accused by means of false manifestations and fraudulent representations which they made to said MARY ANN O. SOLIVEN, prior to and even simultaneous with the commission of the fraud, to the effect that they have the power and capacity to recruit and deploy her as waitress in Singapore, and could facilitate the processing of pertinent papers if given the necessary amount to meet the requirements thereof, induced and succeeded in inducing said accused the amount of Php50,000.00, the strength of said manifestations and representations, said accused well knowing that the same were false and fraudulent and were made solely to obtain, as in fact they did obtain the amount of Php50,000.00, which amount once in their possession, with intent to defraud, misappropriated, misapplied and converted the same to their own personal use and benefit to the damage and prejudice of the said MARY ANN O. SOLIVEN, in the aforesaid amount of Php50,000.00, Philippine Currency.

Contrary to law.<sup>3</sup>

Both cases were raffled to Branch 40 of the Regional Trial Court (RTC) of Manila, which ordered the consolidation thereof.<sup>4</sup> On March 11, 2014, the RTC-Manila Branch 40 issued an Order of Arrest against the accused Toston, Ethel C. Cabasa a.k.a. Ethel Cabasa Gutierrez (Gutierrez) and Alvin Runas (Runas).<sup>5</sup> On May 16, 2014, Toston was arrested at the office of Valesco SMS, Inc., in Taft Avenue, Manila.<sup>6</sup> He was detained at the

<sup>3</sup> Id. at 52.

<sup>4</sup> Id. at 53.

<sup>5</sup> Id. at 54.

<sup>6</sup> Id. at 58-62.

Manila City Jail.<sup>7</sup> There is no indication from the record as to whether Gutierrez and Runas were arrested. On June 19, 2014, Toston filed a Motion to Consolidate manifesting that there are 10 other pending cases for illegal recruitment and estafa against him, Gutierrez, and Runas before the RTC of Manila; and praying that Criminal Case Nos. 14-303962 and 14-303963 be consolidated with these ten pending cases.<sup>8</sup> The RTC-Manila Branch 40 granted Toston's motion.<sup>9</sup> Consequently, the case was re-raffled to the branch where the case with the lowest docket number was pending, in this case, Branch 20. Upon arraignment, Toston pleaded not guilty to the charges in Criminal Case Nos. 14-303962 and 14-303963.<sup>10</sup> Trial then proceeded as to the two aforementioned cases with Toston as the sole accused.

### *Evidence for the Prosecution*

The prosecution presented the private complainant Mary Ann O. Soliven (Mary Ann) as its sole witness, after both parties agreed to stipulate on the testimony of her husband, Charles Soliven (Charles).<sup>11</sup>

Mary Ann testified that she first met Toston on June 19, 2010, when she went to the office of Steadfast International Recruitment Corporation (Steadfast) to apply for a job as a waitress in Singapore.<sup>12</sup> Mary Ann found Steadfast's website while browsing for overseas job openings on the internet.<sup>13</sup> When she went to Steadfast's office in Malate, Manila, she transacted with Toston and Runas.<sup>14</sup> According to Mary Ann, she was first interviewed by Runas for about five minutes.<sup>15</sup> After that, Toston and Runas told her that she was eligible for an overseas job.<sup>16</sup> Toston then gave her leave to go home and told her to wait for their call if she passed the interview.<sup>17</sup> After about two to three weeks, Toston phoned Mary Ann to tell her that she passed the interview and that she needed to go back for her medical examination.<sup>18</sup> Mary Ann thus returned to the Steadfast office, where Toston gave her a referral slip for the medical examination.<sup>19</sup> On July 7, 2010, Gutierrez, who was General Manager of Steadfast, phoned Mary Ann to tell her that she passed the medical examination and that she should pay ₱50,000.00 as placement fee.<sup>20</sup> That same day, at about 10:00 a.m.,

<sup>7</sup> Id. at 63.

<sup>8</sup> Id. at 83-85.

<sup>9</sup> Order dated June 19, 2014, id. at 87; Transmittals, id. at 90-91.

<sup>10</sup> Id. at 296.

<sup>11</sup> Order dated October 22, 2014, id. at 151.

<sup>12</sup> TSN, September 15, 2014, p. 5.

<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> Id. at 6.

<sup>16</sup> Id. at 5-6.

<sup>17</sup> Id at 6.

<sup>18</sup> Id. at 7.

<sup>19</sup> Id at 8.

<sup>20</sup> Id. at 9-10.

Mary Ann and Charles went to the Steadfast office to pay the placement fee. Mary Ann paid the placement fee to Gutierrez, who issued an acknowledgment receipt signed by Runas.<sup>21</sup> Gutierrez then told Mary Ann to wait at least a year for deployment.<sup>22</sup> Mary Ann made regular follow-ups with Toston and Runas but she was never deployed.<sup>23</sup> By November, Mary Ann called Toston for confirmation after reading an internet blog<sup>24</sup> post about Steadfast engaging in illegal recruitment.<sup>25</sup> Toston assured her that Steadfast was not engaged in illegal recruitment.<sup>26</sup> Sometime in 2011,<sup>27</sup> Mary Ann found more internet posts and a social media<sup>28</sup> account of a certain Ka Susan Bantay OCW (Ka Susan) pointing to Steadfast as an illegal recruiter.<sup>29</sup> This proved to be the last straw for Mary Ann, who went to the Steadfast office to withdraw her application.<sup>30</sup> Among the documents returned to her was the result of her medical examination, which showed that she was unfit to work abroad.<sup>31</sup> Seeking the refund of her placement fee payment, Mary Ann went to the office of Ka Susan for assistance.<sup>32</sup> Ka Susan referred Mary Ann to the police authorities to file a formal complaint.<sup>33</sup> Upon the filing of her complaint, Mary Ann discovered that Steadfast's registration with the Philippine Overseas Employment Agency (POEA) was temporarily suspended and that Toston had been deemed resigned from Steadfast as of August 13, 2007.<sup>34</sup> This prompted Mary Ann to file a criminal complaint before the City Prosecutor's Office of Manila.<sup>35</sup> On September 16, 2011, after Mary Ann had filed a complaint with the City

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<sup>21</sup> Id. at 11-12.

<sup>22</sup> Id. at 13-14.

<sup>23</sup> Id. at 14.

<sup>24</sup> A *blog* "is a type of website usually maintained by an individual with regular entries of commentary, descriptions of events, or other material such as graphics or video. Entries are commonly displayed in reverse-chronological order and many blogs provide commentary or news on a particular subject." *Bonifacio v. Regional Trial Court of Makati, Branch 149*, G.R. No. 184800, May 5, 2010. It is also defined as "a log or web page maintained on the World Wide Web, [which is] like a bulletin board and contains whatever material its sponsor decides to post. It does not send messages, and there is no limitation on the length of statements that may be contained on a Blog. Like a bulletin board, it does not communicate except to those who voluntarily choose to read what is posted on it." It is a portmanteau of the phrase "web log". *United States v. Cassidy*, 814 F.Supp.2d 574 (2011); *Doninger v. Niehoff*, 527 F.3d 41 (2008).

<sup>25</sup> Id. at 14-15.

<sup>26</sup> Id. at 15-16.

<sup>27</sup> When asked, Mary Ann said that she first saw the social media posts of Ka Susan Bantay OCW sometime between April and July 2011. Id. at 16.

<sup>28</sup> The term "social media" defies precise definition, but is generally considered to be any internet-based tool, website, or computer program which is primarily intended for personal and group social interaction and information sharing. See *Packingham v. North Carolina*, 137 S.Ct. 1730, 582 U.S. \_\_\_\_ (2017) and *People v. Lopez*, 2016 WL 297942 (Cal. App. Ct. Jan. 25, 2016), accessed December 17, 2020 at <https://www.courts.ca.gov/opinions/nonpub/H041713.PDF>. See also David S. Ardia, *Free Speech Savior or Shield for Scoundrels: An Empirical Study of Intermediary Immunity under Section 230 of the Communications Decency Act*, 43 Loy. L.A. L. Rev. 373 (2010). Available at: <https://digitalcommons.lmu.edu/llr/vol43/iss2/1>.

<sup>29</sup> Id. at 16.

<sup>30</sup> Id.

<sup>31</sup> Id. at 16-17.

<sup>32</sup> Id. at 18.

<sup>33</sup> Id. at 19-20.

<sup>34</sup> Id. at 20-22

<sup>35</sup> Id. at 22.

Prosecutor, Gutierrez executed a promissory note for the return of the placement fee payment.<sup>36</sup>

The prosecution likewise submitted the following pieces of documentary evidence: August 19, 2014 Certification issued by the POEA, August 27, 2014 Memorandum issued by the POEA, Complaint-Affidavit of Mary Ann O. Soliven, Employment Agreement Contract, Acknowledgment Receipt dated July 7, 2010, Medical Examination Certificate, August 8, 2011 Letter of Susan K to PS/Supt. Gilbert Sosa, Complaint Sheet executed by Mary Ann O. Soliven before the CIDG-PNP, and Request for POEA Verification on the registration status of Toston and Steadfast.<sup>37</sup>

### *Evidence for the Defense*

Its demurrer<sup>38</sup> having been denied,<sup>39</sup> the defense proceeded with the presentation of its two witnesses, petitioner Toston and Teresita G. Taladtad.<sup>40</sup>

Toston testified that he worked for Steadfast from 2002 to 2007, first as a Staff Assistant and, after a short lay-off, as a Recruitment Assistant.<sup>41</sup> As a Recruitment Assistant his duties included discussing requirements with overseas job applicants, screening applications, and scheduling of interviews.<sup>42</sup> His designation as a Recruitment Assistant was reported to the POEA.<sup>43</sup> After his stint at Steadfast he worked as a telemarketer and administrative assistant; but in 2009 he returned to Steadfast as an Administrative Assistant, doing mostly clerical work and interacting with persons coming into the office.<sup>44</sup> When asked if Steadfast reported his re-employment as Administrative Assistant with the POEA as required by pertinent regulations, Toston admitted that he did not know, as he did not raise the matter with Steadfast management.<sup>45</sup> Likewise, Toston did not know if Steadfast reported his resignation in 2011 to the POEA.<sup>46</sup>

Toston admitted to interacting with Mary Ann sometime in June 2010, but asserted that he only asked Mary Ann her purpose in coming to the

<sup>36</sup> TSN, October 8, 2014, pp. 10-11.

<sup>37</sup> Formal Offer of Exhibits and Remarkings, Records, pp. 159-160.

<sup>38</sup> The demurrer was filed with leave of court. Records, pp. 181-194.

<sup>39</sup> Order dated January 5, 2015. Records, pp. 196-197.

<sup>40</sup> Also referred to in the record as "Teresita G. Taladtag" and "Teresita G. Talagtag".

<sup>41</sup> TSN, February 4, 2015, pp. 3-4.

<sup>42</sup> Id. at 4.

<sup>43</sup> Id. at 7.

<sup>44</sup> Id. at 5-6; TSN, January 21, 2015, pp. 6-9.

<sup>45</sup> TSN, February 4, 2015, at 7-8.

<sup>46</sup> Id. at 25-26.

office.<sup>47</sup> When Mary Ann said that she wanted to apply for an overseas job, Toston immediately referred her to Runas, who was then the Recruitment Assistant.<sup>48</sup> Toston also denied talking to Mary Ann about the requirements for overseas employment.<sup>49</sup> However, he admitted to handing over the employment contract for Mary Ann to sign; but claimed that he was not present when Mary Ann actually signed the same.<sup>50</sup> As regards the payment of the placement fee, Toston testified that he neither saw nor received the payment for, at that point, Mary Ann was dealing exclusively with Runas (the recruitment assistant) and Gutierrez (the general manager).<sup>51</sup> Furthermore, he had already resigned from Steadfast when Mary Ann withdrew her application.<sup>52</sup> Toston likewise testified that he did not know about the suspension of Steadfast's license.<sup>53</sup> In fine, Toston claimed that he only interacted with Mary Ann personally on two occasions: first, when he referred her to Runas; and second, when he handed over the employment contract to her.<sup>54</sup>

The trial court sums up Taladtad's testimony in this manner:

MS. TERESITA TALADTAD is a POEA labor and employment officer and she brought to Court the requested documents relative to the appointment papers of accused Toston.

Per the files of the POEA, accused Toston was considered resigned as of September 14, 2011, the date the POEA received the letter of Ms. Gutierrez to the POEA in the resignation of the accused Toston.

Per the files of the POEA accused Toston was appointed recruitment assistant on March 30, 2009. In so far as the POEA is concerned the accused was recruitment assistant from June 11, 2011 to September 14, 2011 and there is no information in the POEA files that he resigned in the interregnum.

The accused was employed with the East West Recruitment Agency from July 8, 2011 to March 19, 2012.

The POEA has no files whatsoever that accused was employed as administrative assistant of the STEADFAST.<sup>55</sup>

The documentary evidence for the defense consisted of the following:<sup>56</sup> 1) November 29, 2011 Resolution of the Office of the

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<sup>47</sup> Id. at 9.

<sup>48</sup> Id. at 9-10, 12.

<sup>49</sup> Id. at 11.

<sup>50</sup> Id. at 14-15, 18.

<sup>51</sup> Id. at 17-18; TSN, January 21, 2015, pp. 12-13, 16.

<sup>52</sup> TSN, January 21, 2015, pp. 17-18.

<sup>53</sup> TSN, February 4, 2015, pp. 22-23.

<sup>54</sup> Id. at 30.

<sup>55</sup> Records, p. 296.

<sup>56</sup> Formal Offer of Evidence, id. at 234-240.

Prosecutor of Manila; 2) Articles of Incorporation of Steadfast; 3) 2011 General Information Sheet of Steadfast; 4) Acknowledgment Receipt for ₱50,000.00 received by Runas from Mary Ann; 5) Promissory Note executed by Ethel Gutierrez; 6) August 17, 2011 Certification issued by the POEA; 7) Resignation Letter of Adriano H. Toston from Steadfast dated June 3, 2011; 8) Certificate of Employment from EastWest Placement Center, Inc. dated February 25, 2012; 10) February 20, 2015 Certification issued by the POEA; 11) Letter dated September 19, 2011 from POEA addressed to Ethel C. Gutierrez; and 12) Letter dated September 1, 2011 from Steadfast addressed to POEA with resignation letter of Toston attached.

### **Ruling of the Trial Court**

The trial court found Toston guilty of illegal recruitment and estafa, *viz.*:

PREMISED ON THE FORGOING CONSIDERATIONS, the Court finds accused Adriano Toston GUILTY beyond reasonable doubt of illegal recruitment in Criminal Case No. 14-303962 and sentences him to suffer the penalty of imprisonment of 6 years and 1 day and to pay a fine of P200,000.00.

In Criminal Case No. 14-303963 for estafa, the Court finds the accused GUILTY beyond reasonable doubt and sentences him to serve the indeterminate penalty of 4 years and 1 day of prision correccional as minimum to 8 years of prision mayor as maximum, to restitute Mary Ann Soliven the amount of P50,000.00 plus 6% interest from the filing of information in Court. The entire amount shall earn 6% interest per annum upon finality of the judgment until the whole amount is satisfied.

SO ORDERED.<sup>57</sup>

The trial court held that Toston committed acts which convinced Mary Ann to part with her money in consideration of deployment to Singapore as a waitress. Specifically, Toston answered her queries about the online job posting and assured her that she was qualified therefor. Moreover, not only did Toston ask her to report to Steadfast for her medical examination, he also gave her the referral slip for said examination.<sup>58</sup> The payment of the placement fee was made in Toston's presence; and he was the one who handed over the employment contract for Mary Ann to sign.<sup>59</sup> Although Toston did not receive the placement fee, he may still be held guilty of illegal recruitment because profit is not an element of recruitment as defined in Article 13(b) of the Labor Code.<sup>60</sup> When Mary Ann asked Toston about

<sup>57</sup> Id. at 302.

<sup>58</sup> Id. at 300.

<sup>59</sup> Id.

<sup>60</sup> Id. at 301.

the allegations of illegal recruitment against Steadfast, he assured her that said allegations were untrue.<sup>61</sup> The trial court gave full credence to Mary Ann's testimony, finding no motive or ill will on her part against Toston.<sup>62</sup>

The trial court also dismissed Toston's defense that he was a mere administrative assistant who had no direct involvement in Mary Ann's application, ruling that the acts of recruitment as defined in the Labor Code may be committed even by a rank-and-file employee; and that employees of corporations found to be engaged in illegal recruitment may be held liable as principals if it be proven that they actively and consciously participated therein. The trial court held that Toston, in his capacity as administrative assistant, committed acts of illegal recruitment in his dealings with Mary Ann; hence, he can be held liable for illegal recruitment.

Since Mary Ann could no longer locate Toston when she demanded the return of her placement fee, he was likewise guilty of estafa.<sup>63</sup>

Toston filed a motion for reconsideration,<sup>64</sup> which the trial court denied in an order dated November 27, 2015.<sup>65</sup> Toston appealed his conviction through notice of appeal dated January 27, 2016.<sup>66</sup>

### **Ruling of the Court of Appeals**

The CA sustained the guilty verdict against Toston; but modified the penalty, viz.:

WHEREFORE, premises considered, the Appeal is DENIED. The challenged Judgment dated 29 June 2015 rendered by the RTC, Branch 20 of Manila in Criminal Case Nos. 14-303962-63 for illegal recruitment and estafa is AFFIRMED with MODIFICATION in that in Criminal Case No. 14-303962 for illegal recruitment, Accused-Appellant is sentenced to suffer the penalty of imprisonment of twenty (20) years and to pay a fine of Two Million Pesos (P2,000,000.00) in accordance with Section 7 of R. A. 8042, as amended.

SO ORDERED.

The appellate court gave more weight to Mary Ann's testimony over Toston's denials. It found that she underwent the recruitment process for a

<sup>61</sup> Id.

<sup>62</sup> Id.

<sup>63</sup> Id. at 302.

<sup>64</sup> Id. at 306-329.

<sup>65</sup> Id. at 371-373.

<sup>66</sup> Id. at 376-379.

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job opening in Singapore through Steadfast. She submitted the documentary requirements, was interviewed, medically examined, and then paid the placement fee. She was led to believe that she would be deployed overseas after one year, but this never materialized. Despite making multiple follow-ups, she was never reimbursed for the placement fee.<sup>67</sup> It was also established beyond reasonable doubt that Toston was one of the active participants in Mary Ann's recruitment. He helped conduct the interview and notified Mary Ann that she passed the same. He also notified her of the medical examination requirement and gave her the referral slip for that purpose.<sup>68</sup>

The CA gave short shrift to Toston's arguments regarding the receipt of the placement fee and his employment status with Steadfast. It held that actual receipt of the placement fee is not an element of illegal recruitment. Even assuming that Toston did not receive the placement fee himself, he still committed an act of illegal recruitment when he referred or passed along Mary Ann's application to the recruitment assistant, Runas. Moreover, it was established that Toston did not have authority to engage in recruitment at the time he transacted with Mary Ann. Records show that Toston was registered with the POEA as an employee of a recruitment agency for the periods of June 8, 2004 to August 14, 2007 and July 8, 2011 to March 19, 2012 only. Thus, when he transacted with Mary Ann on June 19, 2010, Toston had no license or authority to engage in recruitment activities.<sup>69</sup>

The CA also sustained the trial court's finding that Toston was guilty of estafa, viz.:

The first and second elements are evident by the active participation on the part of [Toston] in recruiting [Mary Ann] for work abroad, coupled with the fact that, at the time he made representations to [Mary Ann], he lacked the qualification or authority to recruit workers for placement. In other words, [Toston] defrauded [Mary Ann] into believing that he was a bonafide recruitment assistant of Steadfast, and that he has the required authority or capability to find and/or send her to work abroad as a waitress.

On the third and fourth elements, due to the deceit committed by [Toston], [Mary Ann] relied on his representations, and the latter was made to believe that she would eventually land work abroad by paying the placement fee amounting to P12,000.00, which amount she paid. However, as the events unfolded, [Mary Ann] was not employed as promised. Hence, she suffered damage.<sup>70</sup>

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<sup>67</sup> *Rollo*, p. 60.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at 64.

<sup>70</sup> *Id.* at 65.

In line with its finding that Toston was a non-licensee or non-holder of authority at the time he participated in Mary Ann's recruitment, the CA imposed upon him the maximum penalty for illegal recruitment under R.A. No. 8042.<sup>71</sup> Toston filed a motion for reconsideration, which the appellate court denied in a Resolution dated June 1, 2017.<sup>72</sup> Hence, this petition, which raises the essential issue of whether or not Toston is guilty of illegal recruitment and estafa.

### Ruling of the Court

At the time Mary Ann transacted with Steadfast, the crime of illegal recruitment was defined and penalized by Section 6 of R.A. No. 8042 as amended.<sup>73</sup> The concept of illegal recruitment is further clarified in *People v. Tolentino, viz.:*

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<sup>71</sup> Id. at 65-66.

<sup>72</sup> Id. at 69-70. Penned by Associate Justice Jane Aurora C. Lantion (now retired), with Associate Justices Fernanda Lampas-Peralta and Nina G. Antonio-Valenzuela concurring.

<sup>73</sup> Also known as the Migrant Workers and Overseas Filipinos Act of 1995, as amended by Republic Act No. 10022. The provision reads: 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:

- (a) To charge or accept directly or indirectly any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labor and Employment, or to make a worker pay or acknowledge 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, or for the purpose of documenting hired workers with the POEA which include the act of reprocessing workers through a job order that pertains to nonexistent work, work different from the actual overseas work, or work with a different employer whether registered or not with the POEA;
- (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 person or entity not to employ any worker who has not applied for employment through his agency or who has formed, joined or supported, or has contacted or is supported by any union or workers' organization;
- (f) To engage in the recruitment or placement of workers in jobs harmful to public health or morality or to the 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, remittance of foreign exchange earnings, separation 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;

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; and (2) by undertaking any of the acts enumerated under Section 6 of RA 8042. On the other hand, a licensee or holder of authority is also liable for illegal recruitment for overseas employment when he or she undertakes any of

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(k) To withhold or deny travel documents from applicant workers before departure for monetary or financial considerations, or for any other reasons, other than those authorized under the Labor Code and its implementing rules and regulations;

(l) Failure to actually deploy a contracted worker without valid reason as determined by the Department of Labor and Employment;

(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; and

(n) To allow a non-Filipino citizen to head or manage a licensed recruitment/manning agency.

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.

In addition to the acts enumerated above, it shall also be unlawful for any person or entity to commit the following prohibited acts:

(1) Grant a loan to an overseas Filipino worker with interest exceeding eight percent (8%) per annum, which will be used for payment of legal and allowable placement fees and make the migrant worker issue, either personally or through a guarantor or accommodation party, postdated checks in relation to the said loan;

(2) Impose a compulsory and exclusive arrangement whereby an overseas Filipino worker is required to avail of a loan only from specifically designated institutions, entities or persons;

(3) Refuse to condone or renegotiate a loan incurred by an overseas Filipino worker after the latter's employment contract has been prematurely terminated through no fault of his or her own;

(4) Impose a compulsory and exclusive arrangement whereby an overseas Filipino worker is required to undergo health examinations only from specifically designated medical clinics, institutions, entities or persons, except in the case of a seafarer whose medical examination cost is shouldered by the principal/shipowner;

(5) Impose a compulsory and exclusive arrangement whereby an overseas Filipino worker is required to undergo training, seminar, instruction or schooling of any kind only from specifically designated institutions, entities or persons, except for recommendatory trainings mandated by principals/shipowners where the latter shoulder the cost of such trainings;

(6) For a suspended recruitment/manning agency to engage in any kind of recruitment activity including the processing of pending workers' applications; and

(7) For a recruitment/manning agency or a foreign principal/employer to pass on to the overseas Filipino worker or deduct from his or her salary the payment of the cost of insurance fees, premium or other insurance related charges, as provided under the compulsory worker's insurance coverage.

The persons criminally liable for the above offenses are the principals, accomplices and accessories. In case of juridical persons, the officers having ownership, control, management or direction of their business who are responsible for the commission of the offense and the responsible employees/agents thereof shall be liable.

In the filing of cases for illegal recruitment or any of the prohibited acts under this section, the Secretary of Labor and Employment, the POEA Administrator or their duly authorized representatives, or any aggrieved person may initiate the corresponding criminal action with the appropriate office. For this purpose, the affidavits and testimonies of operatives or personnel from the Department of Labor and Employment, POEA and other law enforcement agencies who witnessed the acts constituting the offense shall be sufficient to prosecute the accused.

In the prosecution of offenses punishable under this section, the public prosecutors of the Department of Justice shall collaborate with the anti-illegal recruitment branch of the POEA and, in certain cases, allow the POEA lawyers to take the lead in the prosecution. The POEA lawyers who act as prosecutors in such cases shall be entitled to receive additional allowances as may be determined by the POEA Administrator.

The filing of an offense punishable under this Act shall be without prejudice to the filing of cases punishable under other existing laws, rules or regulations.

the thirteen acts or practices [(a) to (m)] listed under Section 6 of RA 8042.<sup>74</sup>

Thus, under the prevailing law, there are three modes of committing illegal recruitment: 1) illegal recruitment *per se*, as defined in the first paragraph of Section 6 of R.A. No. 8042; 2) illegal recruitment practices, as listed [(a) to (m)] in the same provision; and 3) prohibited practices amounting to illegal recruitment as numerically listed, still in Section 6 of R.A. No. 8042. Illegal recruitment *per se* can only be committed by non-licensees or non-holders of authority;<sup>75</sup> while illegal recruitment practices and prohibited practices amounting to illegal recruitment maybe committed by *any* person or entity, regardless of recruitment licensing status.<sup>76</sup>

In the case at bar, both courts *a quo* found Toston guilty of illegal recruitment *per se*, as neither he (in his personal capacity) nor his purported principal Steadfast had a valid recruitment license from the POEA at the time of Mary Ann's recruitment. Likewise, Toston was also found guilty of illegal recruitment practices, specifically under Section 6(1), since Mary Ann was not actually deployed despite signing an employment contract and paying a placement fee.

Both courts *a quo* found that Toston committed acts amounting to illegal recruitment *per se* when he interviewed Mary Ann and referred her to Runas for further processing of her job application. Toston argues that these acts do not amount to illegal recruitment. He claims that interviewing prospective overseas job applicants is not embraced in the definition of recruitment under Section 6 of R.A. No. 8042. Likewise, he also argues that "*the [CA erred in ruling] that the act of passing the query of someone to the person next to him is an act of referral that would constitute the crime of illegal recruitment*".<sup>77</sup> According to Toston, the term "referring" as used in R.A. No. 8042 pertains only to referrals which are related to the procurement of workers, since the law uses the conjunction "and" between the phrases "procuring workers" and "includes referring." Both arguments are specious.

While interviewing applicants is indeed not expressly mentioned in the definition of illegal recruitment *per se* in Section 6 of R.A. No. 8042, it is nevertheless an essential part of the recruitment process.<sup>78</sup> Consequently,

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<sup>74</sup> 762 Phil. 592, 611 (2015).

<sup>75</sup> Activities constituting recruitment under the Labor Code, when undertaken by non-licensees and/or non-holders of authority are illegal *per se*, for the law requires a license or authority to engage in recruitment. Labor Code, Arts. 16, 15, 28. See Cesario A. Azucena, Jr., *Everyone's Labor Code* 46 (2018).

<sup>76</sup> See Azucena, Jr., *id.* at 46-47.

<sup>77</sup> Petition for Review, *Rollo*, p. 20.

<sup>78</sup> Michael A. McDaniel, Deborah L. Whetzel, Frank L. Schmidt, and Steven D. Maurer, *The validity of employment interviews: A comprehensive review and meta-analysis*, 79 JOURNAL OF APPLIED

this Court has considered the act of interviewing overseas job applicants as an indicator of participation in illegal recruitment when taken together with other acts of the accused, especially in cases where the recruitment was done through a corporation.<sup>79</sup> In the case at bar, Toston's participation in the alleged illegal recruitment was not limited solely to interviewing the applicant. He referred Mary Ann's application to the recruitment assistant (Runas) and gave her the referral slip for the medical examination, viz.:

[Mary Ann]: MR. TOSTON told, me that I could go home and wait for a telephone call from them, if I passed the interview.

FISCAL AGUILA: So, how long did you wait for their call, if any?

[Mary Ann]: After 2 to 3 weeks they called me.

COURT: (QUESTION FROM THE COURT:) Who called you?

[Mary Ann]: **MR. TOSTON called me for a medical exam and he told me that I already passed the interview.**

FISCAL AGUILA: **And how did MR. TOSTON informed you that you passed the exam and required you to take a medical examination?**

[Mary Ann]: **He called me through my cellphone.**

COURT: (QUESTION FROM THE COURT:) **How did you know that it was TOSTON who called you?**

[Mary Ann]: **He introduced himself from the call that he made.**

FISCAL AGUILA: What happened after you were informed that you passed the interview and you were required for take medical examination?

[Mary Ann]: **First, I went to their office because MR. TOSTON gave me a referral slip for the hospital that's gonna conduct my medical exam.**<sup>80</sup>

x x x x

ACP AGUILA: You did not deal with Mary Ann Soliven on June 19, 2010?

[Toston]: No, sir.

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PSYCHOLOGY (No. 4) 599-616 (1994); Howard M. Berkson, Gerald R. Ferris, Michael M. Harris, *The recruitment interview process: Persuasion and organization reputation promotion in competitive labor markets*, 12 HUMAN RESOURCE MANAGEMENT REVIEW (No. 3) 359-375 (2002); Allen I. Huffcutt & Satoris S. Youngcourt, *Employment interviews*, in Deborah L. Whetzel & George R. Wheaton (eds.), APPLIED MEASUREMENT: INDUSTRIAL PSYCHOLOGY IN HUMAN RESOURCES MANAGEMENT 181-199 (2007).

<sup>79</sup> See *People v. Go & Gonzales*, G.R. No. 172225, June 17, 2015 (unsigned Resolution); *People v. Nogra*, 585 Phil. 712, 723 (2008); *People v. Temporada*, 594 Phil. 680, 711 (2008).

<sup>80</sup> TSN, September 15, 2014, pp. 7-8. Emphases and underscoring supplied.

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ACP AGUILA: You only entertained her when she went to your office on that day?

[Toston]: Yes, sir.

COURT: What kind of entertainment did you give her if you entertained her?

[Toston]: I asked her what she wanted.

COURT: What else?

[Toston]: That she is applying for a job abroad.

COURT: What else?

[Toston]: **I referred her to the Recruitment Assistant.**

x x x x

ACP AGUILA: So, you only asked what do you want and that she answered that she wants to go abroad?

[Toston]: Yes, sir.

ACP AGUILA: **After that, you referred Mary Ann to Alvin Runas, the Recruitment Assistant?**

[Toston]: **Yes, sir.**

ACP AGUILA: At that time when Mary Ann Soliven approached you, Alvin Runas was beside you?

[Toston]: Yes, sir.

ACP AGUILA: And you did not immediately refer Mary Ann Soliven to Alvin Runas?

[Toston]: Because I talked to her of what she needs.

x x x x

ACP AGUILA: Mr. Witness, you disputed or you denied to the testimony given by Mary Ann Soliven, or testimony given were not true?

[Toston]: Yes, sir.

ACP AGUILA: And you said that you were wrongfully accused by Mary Ann Soliven?

[Toston]: Yes, sir.

ACP AGUILA: Because you claimed that, you did not recruit, promised Mary Ann Soliven for employment abroad?

[Toston]: Yes, sir.

ACP AGUILA: Now, but you admitted that, you referred Mary Ann Soliven to the Recruitment Assistant Alvin Runas?

[Toston]: Yes, sir.

COURT: And will you tell us how you referred Mary Ann Soliven to Alvin Runas?

[Toston]: Yes, Your Honor.

COURT: How?

[Toston]: Sabi ko lang po so kanya, "TOL, MAG-AAPPLY DAW PARA SA ABROAD. PAKI-ASIKASO NAMAN."<sup>81</sup>

Clearly, Toston admitted that he passed Mary Ann on to Runas for the processing of her overseas job application. This amounts to a referral which is expressly mentioned in Section 6 of R.A. No. 8042 as an act of illegal recruitment.<sup>82</sup> Toston's strained & ungrammatical assertion that the act of referring workers constitutes illegal recruitment only when done in connection with the procurement of workers is erroneous. A careful reading of the provision clearly shows that the phrase "referring, contract services, promising or advertising for employment abroad" is a continuation of the phrase "any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers". Both phrases refer to the subject of the whole sentence, which is illegal recruitment. Consequently, the acts of "referring, contract services, promising or advertising for employment are abroad" must be considered acts of illegal recruitment in the same way as "canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers".

Having established that Toston committed acts constituting recruitment under the law, we now consider if he was correctly held liable for violating the law on illegal recruitment through illegal recruitment *per se* or through illegal recruitment practice. The prosecution did not attempt to prove that Toston personally represented himself as a licensee or holder of authority. Per POEA records, Toston was employed by Steadfast as Recruitment Assistant from June 11, 2007 to August 14, 2007, and from June 11, 2011 to September 14, 2011.<sup>83</sup> However, Steadfast's internal documents show that after his 2007 stint at Steadfast, Toston was hired again

<sup>81</sup> TSN, February 4, 2015, pp. 9-10, 12-13. Emphases and underscoring supplied.

<sup>82</sup> Referral is the act of passing along or forwarding of an applicant for employment after an initial interview of a selected applicant for employment to a selected employer, **placement officer** or bureau. *People v. Gonzales-Flores*, 408 Phil. 855 (2001); *People v. Goce & Agustin*, 317 Phil. 897 (1995).

<sup>83</sup> Records, pp. 215, 220-221.

on February 16, 2009; and separated on June 16, 2011 due to resignation.<sup>84</sup> Furthermore, the record shows that Mary Ann dealt with Toston in the latter's capacity as an employee of Steadfast; and that he was charged alongside his co-employee Runas and Steadfast's general manager Gutierrez. Given these facts, it is clear that Toston's liability is based upon his employment with Steadfast, the entity with whom Mary Ann transacted. The record also shows that Steadfast's license to operate as a private recruitment agency was valid until June 10, 2015;<sup>85</sup> but the same was preventively suspended on July 8, 2011<sup>86</sup> and cancelled on May 25, 2012.<sup>87</sup>

Nevertheless, in affirming Toston's conviction, the CA held:

It may be recalled that Soliven sought the services of Steadfast on 19 June 2010, and that she underwent processing/screening for work abroad by Accused-Appellant on even date. However, as per Certification 28 dated 19 August 2014 issued by the Philippine Overseas Employment Administration (POEA), Accused-Appellant held the position of Recruitment Assistant of Steadfast only from 08 June 2004 to 14 August 2007, after which he was employed by East West Placement Center, Inc. as a Recruitment Assistant from 08 July 2011 to 19 March 2012. Consequently, when Accused-Appellant was in the act of recruiting Soliven for employment abroad at the office of Steadfast on 19 June 2010, Accused-Appellant was bereft of any license or authority to engage in such activity.<sup>88</sup>

However, Steadfast's internal records and the positive testimonies of both Mary Ann and Toston clearly show that the latter was employed at Steadfast and that Mary Ann transacted with him in his capacity as a Steadfast employee. The records also show that Toston did not ascertain his POEA registration status from 2009 to 2011, considering that Steadfast management reported his previous stint to the POEA:

ACP AGUILA: Are you claiming that, you are an Administrative Assistant from February 16, 2009 to June 16, 2011, right?

[TOSTON]: Yes, sir.

ACP AGUILA: But you do not have any employment contract?

[TOSTON]: None, sir.

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<sup>84</sup> Appointment Letter, id. at 226; Memorandum from Adriano H. Toston to Steadfast Int'l Rect. Corp c/o Ethel C. Gutierrez, Re: Resignation, id. at 223. Toston positively testified that his employment at Steadfast ceased on June 11, 2011. TSN, February 16, 2015, p. 15.

<sup>85</sup> POEA Certification dated August 17, 2011. Records, p. 263.

<sup>86</sup> POEA Certification and Letter to Ethel C. Gutierrez, Id. at 220-221.

<sup>87</sup> POEA Certification, records, p. 215.

<sup>88</sup> CA Decision. *Rollo*, p. 64.



ACP AGUILA: You also stated that, during the last hearing, you stated your duties and responsibilities?

[TOSTON]: Yes, sir.

ACP AGUILA: But you cannot present any proof before the Court such duties and responsibilities in this Court?

[TOSTON]: I have no duplicate to present.

ACP AGUILA: Now, you would also agree with me that your stint at Steadfast from February 16, 2009 to June 16, 2011 such was not reported at POEA, is that, correct?

[TOSTON]: That is what I know, sir.

COURT: But as a Recruitment Assistant, that designation was reported to the POEA? Your designation at the Steadfast as Recruitment Assistant, was reported to the POEA?

[TOSTON]: Between 2004 to 2007 po?

COURT: Yes.

[TOSTON]: Yes, Your Honor.

ACP AGUILA: But your stint, as Administrative Assistant at Steadfast from February 16, 2009 to June 16, 2011, the same was not reported to the POEA?

[TOSTON]: I think so, sir.

ACP AGUILA: But did you verify with the President of the Steadfast?

[TOSTON]: No, sir.

ACP AGUILA: You did not inquire from the management?

[TOSTON]: No, sir.<sup>89</sup>

Nevertheless, the record shows that Steadfast, through its general manager, Gutierrez, submitted a letter to the Licensing and Regulation Division of the POEA dated March 27, 2009, stating that Steadfast is “*submitting herewith the documents of x x x Mr. Adriano H. Toston – recruitment/processing assistant as of February, 2009 x x x*”.<sup>90</sup> Also extant in the records is a letter dated March 31, 2009, signed by the Officer-In-Charge of the POEA Licensing Branch, Lucia L. Villamayor, stating that that the “*notice on the appointment of [Toston] as x x x Recruitment/Processing Assistant was*

<sup>89</sup> TSN, February 4, 2015, pp. 6-8.

<sup>90</sup> Records, p. 225.

reflected in [POEA's] records on the date of receipt on 30 March 2009".<sup>91</sup> It is therefore clear that at the time of Mary Ann's recruitment in June 2010, Steadfast's recruitment license had not yet been cancelled; and Toston's employment thereat was duly reported to the POEA. The fact that Toston's 2009-2011 stint at Steadfast does not appear in subsequent POEA record searches cannot be held against him. In *People v. Chowdury*,<sup>92</sup> this Court acquitted the accused who was found guilty of illegal recruitment on the basis of a finding that his employment in the subject recruitment agency was not reported to the POEA, viz.:

Evidence shows that accused-appellant interviewed private complainants in the months of June, August and September in 1994 at Crafrade's office. At that time, he was employed as interviewer of Crafrade which was then operating under a temporary authority given by the POEA pending renewal of its license. The temporary license included the authority to recruit workers. He was convicted based on the fact that he was not registered with the POEA as employee of Crafrade. Neither was he, in his personal capacity, licensed to recruit overseas workers. Section 10 Rule II Book II of the Rules and Regulation Governing Overseas Employment (1991) requires that every change, termination or appointment of officers, representatives and personnel of licensed agencies be registered with the POEA. Agents or representatives appointed by a licensed recruitment agency whose appointments are not previously approved by the POEA are considered "non-licensee" or "non-holder of authority" and therefore not authorized to engage in recruitment activity.

Upon examination of the records, however, we find that the prosecution failed to prove that accused-appellant was aware of Crafrade's failure to register his name with the POEA and that he actively engaged in recruitment despite this knowledge. **The obligation to register its personnel with the POEA belongs to the officers of the agency. A mere employee of the agency cannot be expected to know the legal requirements for its operation. The evidence at hand shows that accused-appellant carried out his duties as interviewer of Crafrade believing that the agency was duly licensed by the POEA and he, in turn, was duly authorized by his agency to deal with the applicants in its behalf. Accused-appellant in fact confined his actions to his job description. He merely interviewed the applicants and informed them of the requirements for deployment but he never received money from them. Their payments were received by the agency's cashier, Josephine Ong.** Furthermore, he performed his tasks under the supervision of its president and managing director. Hence, we hold that the prosecution failed to prove beyond reasonable doubt accused-appellant's conscious and active participation in the commission of the crime of illegal recruitment. His conviction, therefore, is without basis.<sup>93</sup>

<sup>91</sup> Id. at 224.

<sup>92</sup> 382 Phil. 459 (2000).

<sup>93</sup> Id. at 471-472.

Similarly, Toston cannot be faulted for not following up on his registration status. Since the obligation to register his employment fell upon Steadfast, Toston was justified in relying upon his employer to faithfully comply with industry regulations. Furthermore, there is enough documentation on record to prove that Toston was employed at Steadfast at the time of Mary Ann's recruitment, and that Steadfast reported his employment to the POEA. Like the accused in *Chowdury*, Toston's participation in Mary Ann's recruitment was limited to the short interview to determine Mary Ann's purpose in coming to the office, the referral to Runas, and the referral to the medical clinic. Mary Ann herself admits that Toston was not present when she paid the placement fee to Gutierrez.<sup>94</sup> Given these circumstances, it is clear that Toston was merely performing his tasks as a documented employee of a validly licensed recruitment agency, under the supervision of the agency's general manager, Gutierrez. Thus, he cannot be held liable for illegal recruitment *per se*.

As regards illegal recruitment practice under Section 6(1), it must be noted that Steadfast asked Mary Ann to wait for one year after the approval of her application for her deployment. However, before the one-year waiting period had passed, Mary Ann withdrew her application and sued Steadfast for illegal recruitment after reading blogs and the social media posts of Ka Susan Bantay OCW, *viz.*:

FISCAL AGUILA: Would you recall if there was a success on the follow-ups that you made?

[MARY ANN]: No, sir, because by November I saw something in the internet like a blog that Steadfast is an illegal recruiter.

COURT: (QUESTION FROM THE COURT:) Steadfast is an illegal recruiter?

[MARY ANN]: Yeah. I saw that in the blog by November, 2010.

FISCAL AGUILA: How did you see, through a blog?

[MARY ANN]: Yes.

COURT: (QUESTION FROM THE COURT:) Ano ang blog?

[MARY ANN]: Post or comment in the internet.

COURT; (QUESTION FROM THE COURT:) Was that posted by a person you know?

[MARY ANN]: No.

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<sup>94</sup> TSN, September 15, 2014, pp. 11-12; TSN, October 8, 2014, p. 7.

COURT: (QUESTION FROM THE COURT:) Was that posted by the POEA?

[MARY ANN]: No

COURT: (QUESTION FROM THE COURT:) So you don't know who posted that?

[MARY ANN]: Yes.

COURT: (QUESTION FROM THE COURT:) So, upon seeing that blog did you take any action?

[MARY ANN]: Yes, Your Honor. I called again Steadfast and asked MR. TOSTON, and he said that it's not true. Eventually, I already gave my trust to them by giving them the money so I don't believe the blog.

FISCAL AGUILA: So since you were assured by accused - TOSTON that the blog that you read was not true so, what action, if any, did you make?

[MARY ANN]: In July, 2011 I saw another blog and in the Facebook Account of KA SUSAN BANTAY O.C.W., and which also stated that Steadfast is an illegal recruiter.

FISCAL AGUILA: So that was sometime in 2011?

[MARY ANN]: Yes.

FISCAL AGUILA: Could you still recall the exact month that you read that blog O.C.W KA SUSAN?

[MARY ANN]: Like April or May 2011.

FISCAL AGUILA: So upon reading the blog from O.C.W. KA SUSAN, what - did you do, if any?

[MARY ANN]: I went to Steadfast International and right there and then I withdraw my original requirements that I submitted from them, sir.

FISCAL AGUILA: From whom did you withdraw the documents that you submitted in Steadfast?

[MARY ANN]: I don't know the person who gave the documents to me, because MR. TOSTON and MR. RUNAS was in the second floor office and they were not coming down.<sup>95</sup>

x x x x

COURT: (QUESTION FROM THE COURT:) When you applied in 2010, the company was still in good standing, is it not?

[MARY ANN]: Yes, Your Honor.

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<sup>95</sup> TSN, September 15, 2014, pp. 14-16.

COURT: (QUESTION FROM THE COURT:). It was only preventively suspended the following year 2011?

[MARY ANN]: Yes, Your Honor.

COURT: (QUESTION FROM THE COURT: So what happened to your application with the corporation; what happened to your application to work abroad in Singapore? You did not anymore pursue it and the company was not at fault in not deploying you to Singapore?

[MARY ANN]: (No Answer)

COURT: (QUESTION FROM THE COURT:) Nag-apply ka hindi mo inantay yung one year di ba? Sabi sayo ng company you wait for one year before you are deployed. So before the waiting period of one year nagkaso ka na agad and you did not inquire for the company whether or not it is capable of sending you abroad?

[MARY ANN]: Before po, nag-check po ako sa internet kung okay na po yung standing na 2010, kung nakakapagpaalis po sila.

COURT: (QUESTION FROM THE COURT:) Oo.

[MARY ANN]: But noong 2011 po (Interrupted)

COURT: (QUESTION FROM THE COURT:) Oo nga, pero hindi mo tinanong nga sa company na, "Ano ba, will you be able to deploy me to Singapore?" You did not inquire; you did not ask kasi nagreklamo ka na agad?

[MARY ANN]: Yung continuous follow-ups ko po sabay na rin po pagkatanong ko kung makakaalis po talaga ako, and then they said to me na makakaalis po talaga ako.

COURT: (QUESTION FROM THE COURT:) Did the company give you a date of your deployment?

[MARY ANN]: No they did not give me the date.

COURT: (QUESTION FROM THE COURT:) So there was no failure on the part of the company to deploy you di ba? I do not know. Continue. Is that all?

FISCAL AGUILA: Yes, Your Honor.<sup>96</sup>

The records reveal that Mary Ann was found to be medically unfit for overseas deployment,<sup>97</sup> contrary to the representations made to Mary Ann by Gutierrez. However, the prosecution did not present proof that Toston knew about the result of Mary Ann's medical examination or that he was privy to Gutierrez' concealment of this fact from Mary Ann. At the risk of being

<sup>96</sup> Id. at 24-26.

<sup>97</sup> Medical Examination Certificate, Records, p. 137.

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repetitive, the only acts of recruitment conclusively attributable to Toston are: 1) the preliminary interview, 2) the referral to Runas, and 3) the referral to the medical clinic. Given these facts, Toston cannot be held liable for violating Section 6(1), since the failure to deploy Mary Ann was based on a valid reason. Furthermore, she voluntarily withdrew her application before the agreed-upon waiting period.

Given our findings that: 1) Toston was a validly documented employee of a validly registered recruitment agency at the time he transacted with the complainant; and 2) Mary Ann's non-deployment was not only partly attributable to her own fault but also based on a justified reason, we must likewise absolve Toston of the crime of estafa. Under the current law on illegal recruitment, a person who commits acts constituting illegal recruitment may be held liable not only for the crime of illegal recruitment but also for estafa under Article 315(2)(a) of the Revised Penal Code.<sup>98</sup> The elements of estafa under said provision 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.<sup>99</sup> While Mary Ann did suffer pecuniarily estimable damage in the form of the ₱50,000.00 placement fee she paid to Gutierrez and Runas, the element of fraud by abuse of confidence or deceit with respect to Toston is negated by the fact that, at the time of the act complained of, Toston was an employee of a validly licensed recruitment agency. Assuming *arguendo* that Mary Ann was indeed defrauded when Gutierrez lied to her about the result of her medical examination, such fraudulent act cannot be attributed to Toston, absent any proof that he directly participated in or abetted the commission thereof. However, as we have previously mentioned, the prosecution was unable to prove that Toston knew about the result of Mary Ann's medical examination or that he was privy to the concealment of this fact from Mary Ann by Gutierrez, the general manager of Steadfast. Likewise, the defense was able to prove that Toston was not present and had no participation whatsoever in the payment of the placement fee, which was handled by Gutierrez and Runas. Thus, the charge of estafa against Toston has no basis.

**WHEREFORE**, the present petition is **GRANTED**. The December 28, 2016 Decision of the Court of Appeals in CA-G.R. CR No. 38408 is hereby **REVERSED** and **SET ASIDE**. Petitioner Adriano Toston y Hular is hereby **ACQUITTED** for failure of the prosecution to prove his **GUILT** beyond reasonable doubt. He is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is being detained for any other lawful cause.

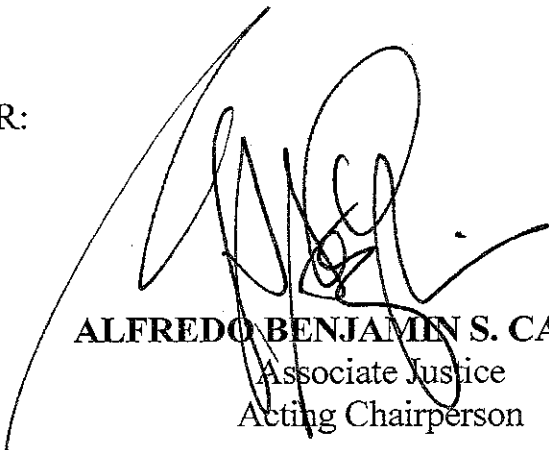
<sup>98</sup> *People v. Tolentino*, supra note 74 at 606; *People v. Ochoa*, 672 Phil. 46, 68-69 (2011).

<sup>99</sup> *People v. Solina*, 778 Phil. 207, 218 (2016).

**SO ORDERED.**

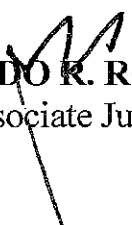
  
**SAMUEL H. GAERLAN**  
Associate Justice

WE CONCUR:

  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice  
Acting Chairperson

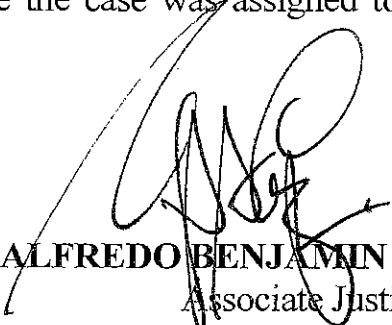
  
**ROSMARID. CARANDANG**  
Associate Justice

  
**RODIL V. ZALAMEDA**  
Associate Justice

  
**RICARDO R. ROSARIO**  
Associate Justice

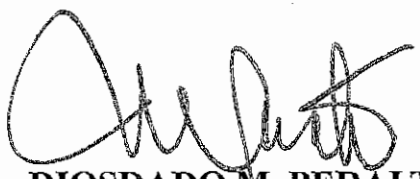
**ATTESTATION**

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.

  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice  
Acting Chairperson

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting 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.

**DIOSDADO M. PERALTA**

Chief Justice