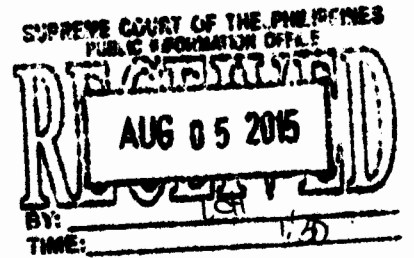




Republic of the Philippines
Supreme Court
Manila
FIRST DIVISION



NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **June 17, 2015** which reads as follows:*

“G.R. No. 216670 (Eugene Nyati y Themba, *petitioner v. People of the Philippines, respondent.*) – The petitioner’s motion for an extension of thirty (30) days within which to file a petition for review on certiorari is **GRANTED**, counted from the expiration of the reglementary period.

In two Informations filed with the Regional Trial Court (RTC), Branch 133 of Makati City, petitioner was charged as follows:

Criminal Case No. 07-198

That in or about and sometime in June 2005, in the City of Makati, Philippines and within the jurisdiction of this Honourable Court, the above-named accused, operating as a syndicate, did then and there, willfully, unlawfully and feloniously for a fee recruit and promise employment/job placement abroad to LIZA MASANGKAY, MA. LUCILLE QUESADA and EVANGELINE T. DE TORRES, but failed to actually deploy them without justifiable reason and to reimburse the expenses incurred by the said worker(s) in connection with their documentation and processing for purposes of deployment which did not take place without the workers’ fault.

Criminal Case No. 07-199

That in or about and sometime in June 2005, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously defraud EVANGELINE T. DE TORRES, in the following manner to wit: the said accused, by means of false manifestation and fraudulent representation which he made to the complainant to the effect

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that he [has] the power and capacity to deploy her for work in Australia if given the necessary amount to meet the requirements and by means of other deceit of similar import induced and succeeded in inducing the complainant to give and deliver to him the amount of USD 29,000.00, the accused knowing fully well that the same was false and fraudulent and was made only to obtain, as in fact the accused obtained the amount of USD 29,000.00, which amount the accused applied and used for his personal benefit, to the damage and prejudice of the said EVANGELINE T. DE TORRES.¹

According to the prosecution, Evangeline De Torres (Evangeline) applied for overseas employment in Australia with petitioner, who asked her to submit documents and pay the amount of USD \$4,000.00 for processing and visa. Petitioner allegedly collected an additional amount of ₱10,000.00 as visa processing fee. When petitioner failed to deploy Evangeline to Australia, the latter asked for the return of her passport. Evangeline could not locate petitioner's whereabouts but he left her passport with the office security guard. Evangeline also learned that petitioner was not licensed to recruit workers for deployment abroad.

Petitioner denied that he recruited Evangeline, received any amount of money from her, and promised her employment abroad. He claimed that he was engaged by Lidros Service Contractor as a consultant to provide counselling and training to Filipino students who intend to go abroad from 2004 to 2006. When he went to the office to collect his fees, he was surprised to see about 50 to 60 persons, some of whom he had met from his counselling, demanding the return of their money from the owners of Lidros.

After trial, the RTC found petitioner guilty beyond reasonable doubt of simple illegal recruitment and *estafa*. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, in Criminal Case No. 07-198, the prosecution having been proved the guilt of the accused beyond reasonable doubt in the crime of simple illegal recruitment only, accused Eugene Nyati is hereby ordered to suffer the prison term of Four (4) years, as minimum, to Eight years as maximum.

In Criminal Case No. 07-199 where the amount involved is P246,820.00, finding the accused guilty beyond reasonable doubt of the crime of Estafa, accused Eugene Nyati is hereby ordered to suffer the imposable maximum penalty of 20 years of reclusion temporal.

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¹ Rollo, p. 30.

As to civil liability, the accused is ordered to reimburse Evangeline De Torres the amount of P246,820.00.

Further, with respect to Criminal Case Nos. 07-200 to 07-201, the same were dismissed provisionally with the express consent of the accused in an Order dated February 19, 2010.²

On appeal, the Court of Appeals affirmed the Decision of the RTC with modifications as to the penalty imposed. The dispositive portion reads:

WHEREFORE, the foregoing premises considered, the instant appeal is **DENIED** and the assailed Decision dated November 3, 2010 of the Regional Trial Court, Branch 133 of Makati City in Criminal Case Nos. 07-198 and 07-199 are **AFFIRMED with MODIFICATION** as to the penalty imposed in **Criminal Case No. 07-199** in that accused-appellant is hereby sentenced to suffer imprisonment of **four (4) years and two (2) months of *prision correccional*, as minimum to twenty (20) years of *reclusion temporal*, as maximum**, together with all the accessory penalties as provided by law.³

The appellate court concurred with the trial court that appellant had committed acts relative to recruitment and placement. The appellate court also ruled that petitioner can no longer question the admission into evidence of the photocopy of the receipts evidencing the payment to petitioner of the placement and visa fees. The appellate court found that not only were the receipts properly offered into evidence but that petitioner did not object to these exhibits being admitted into evidence by the prosecution.

In the instant petition, petitioner claims that it was never proven that he undertook any activity within the meaning of "recruitment and placement" and that he gave the impression that he had the power to send workers abroad for employment. Petitioner contends that the receipts considered as evidence to prove his guilt were mere photocopies and should not have been admitted into evidence. Consequently, petitioner asserts that the prosecution failed to prove that the victim parted with her money.

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² Id. at 33.

³ Id. at 39.

We find no compelling reason to deviate from the findings of the trial court, as affirmed by the Court of Appeals. Factual findings of the RTC, when affirmed by the Court of Appeals, are entitled to great weight and respect by this Court and are deemed final and conclusive when supported by the evidence on record.⁴

Illegal recruitment is committed when two elements concur, namely: (1) the offender has no valid license or authority required by law to enable him to lawfully engage in the recruitment and placement of workers; and (2) he undertakes any activity within the meaning of "recruitment and placement" defined under Article 13(b) of the Labor Code.⁵ All these elements are present. Records show that petitioner was not licensed by the Philippine Overseas Employment Administration (POEA) to engage in the recruitment and placement of workers abroad. In Evangeline's testimony, she positively identified petitioner as the person who processed her application for overseas employment and received payment for it.

We agree with the appellate court that petitioner can no longer question the admission into evidence of the photocopied receipts evidencing payment to petitioner. Furthermore, an accused may be convicted of illegal recruitment despite the absence of receipts if the witness can positively show that the accused was involved in the prohibited recruitment.⁶

In the same vein, we affirm the trial court's and appellate court's findings that petitioner is guilty of the crime of *estafa* as defined under Article 315, paragraph 2(a) of the Revised Penal Code. Said crime is committed by any person who defrauds another by using fictitious name, or falsely pretends to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of similar deceits executed prior to or simultaneously with the commission of fraud. In the present case, the petitioner led Evangeline to believe that he had the capacity to send the latter to Australia for employment, when in truth, he did not even possess the necessary license. Evangeline would not have parted with her money were it not for petitioner's assurances. His defense of denial cannot prevail over positive testimony.

We likewise affirm the penalties imposed by the Court of Appeals as they are well within the ranges provided by law.

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⁴ *Rodolfo Guevarra v. People*, G.R. No. 170462, 5 February 2014, 715 SCRA 384, 394-394.

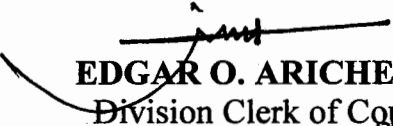
⁵ *People v. Hu*, 588 Phil. 978, 988 (2008).

⁶ *People v. Sagaydo*, 395 Phil. 538, 549 (2000).

WHEREFORE, the petition is **DENIED**. The Decision dated 3 February 2014 of the Court of Appeals in CA-G.R. CR No. 33968 is hereby **AFFIRMED**.

SO ORDERED.”

Very truly yours,


EDGAR O. ARICHETA
Division Clerk of Court

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