



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE G.R. No. 240694
PHILIPPINES,

Plaintiff-Appellee,

Present:

- versus -

PERLAS-BERNABE, J.,
Chairperson,
HERNANDO,
INTING,*
DELOS SANTOS, and
BALTAZAR-PADILLA,** JJ.

ERNALYN PALICPIC y
MENDOZA a.k.a. "Ermalyn
Mendoza," "Lyn," and "Malyn,"
Accused-Appellant.

Promulgated:

07 SEP 2020

X-----X

DECISION

DELOS SANTOS, J.:

Before the Court is an ordinary Appeal¹ filed by accused-appellant Ermalyn Palicpic y Mendoza *a.k.a* "Ermalyn Mendoza," "Lyn," and "Malyn" (appellant) assailing the Amended Decision² dated 30 January 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06619, which affirmed with modifications the Decision³ dated 23 July 2013 of the Regional Trial Court (RTC) of Manila, Branch 47, in Criminal Case Nos. 10-276564, 10-276565, 10-276566, and 10-276568 convicting appellant of Illegal Recruitment in Large Scale, as defined and penalized under Section 6(l) and (m) in relation to Section 7(b) of Republic Act No. (RA) 8042, otherwise known as the Migrant Workers Overseas Filipino Act of 1995, and three (3) counts of Estafa under Article 315, paragraph 2(a) of the Revised Penal Code (RPC).

* On official leave.

** On leave.

¹ *Rollo*, pp. 46-48.

² Penned by Associate Justice Maria Elisa Sempio Diy, with Associate Justices Celia C. Librea-Leagogo and Pablito A. Perez, concurring; *id.* at 2-11.

³ Penned by Presiding Judge Paulino Q. Gallegos; CA *rollo*, pp. 111-130.

The Facts

After appellant was apprehended in an entrapment operation conducted by the Philippine National Police Criminal Investigation and Detection Group (PNP-CIDG), she was charged with Illegal Recruitment in Large Scale docketed as Criminal Case No. 10-276564, the accusatory portion of which states:

Criminal Case No. 10-276564

That on or about 10:30 in the morning of May 12, 2009 in the City of Manila, Philippines and within the jurisdiction of this Honorable Court, accused ERNALYN PALICPIC y MENDOZA a.k.a. ERMALYN MENDOZA, LYN/MALYN[,] representing herself to have the capacity to contract, transport, refer, procure and or (sic) enlist workers for employment to Qatar, did then and there willfully, unlawfully and feloniously recruit and renew her promise of overseas employment to four (4) persons, namely: Mary Ann Tucay, Christopher Yambao, Edgardo Ramirez, and Richard Peroche, without first securing a license and/or permit to recruit workers for overseas employment from the Philippine Overseas Employment Administration (POEA) contemplated under Article 13 9[(f)] of Presidential Decree No. [442], as amended, otherwise known as the Labor Code of the Philippines. Further, said accused failed to deploy without valid reason the said workers and despite said failure to deploy them said accused failed to reimburse the expenses incurred by the said workers in connection with their documentation and processing for purposes of deployment, to their damage and prejudice.

CONTRARY TO LAW.⁴

Appellant was also charged with four (4) counts of Estafa, of which only three (3) resulted to a conviction and hence, appealed before the Court. The Informations are similarly worded, save for the details pertaining to the date of the commission of the offense, the name of the complainant, job recruited for, and the amount involved:

Criminal Case No. 10-276565

That on or about April 8, 2009 to April 20, 2009 in the City of Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused ERNALYN PALICPIC y MENDOZA a.k.a. ERMALYN MENDOZA, LYN/MALYN, did then and there willfully, unlawfully, and feloniously defraud Christopher Yambao, the accused under false and fraudulent representations made to the effect that [she] would secure Christopher Yambao employment as mechanical engineer in Qatar, if Christopher Yambao would deliver to her the amount of Php43,500.00 to cover the cost of placement fee, visa processing, documentation and plane ticket and by means of other similar deceit, which representations she well knew were false and fraudulent since she knew that she's not a licensee nor have (sic) the authority to recruit

⁴ Id. at 112, 190.

overseas worker and were only made to induce Christopher Yambao to give and deliver as in fact the said Christopher Yambao gave and delivered the amount of Php43,500.00, and once in possession of said amount, willfully, unlawfully, and feloniously misappropriated, misapplied, and converted the amount of Php43,500.00 to her own personal use and benefit, to the damage and prejudice of Christopher Yambao.

CONTRARY TO LAW.⁵

The variation in the Informations of the other two (2) criminal cases, are summarized below:

Criminal Case No.	Date of Commission	Complainant's Name	Job Reeruted For	Amount Involved
10-276566 ⁶	April 8 to 20, 2009	Mary Ann Tucay (Tucay)	Receptionist	₱43,500.00
10-276568 ⁷	March 23 to April 28, 2009	Edgardo Ramirez (Ramirez)	Waiter	₱34,000.00

Upon motion of the prosecution, the criminal cases were consolidated. When arraigned, appellant pleaded not guilty.

Version of the Prosecution

The prosecution presented seven witnesses: complainants (1) Ramirez, (2) Tucay, and (3) Christopher Yambao (Yambao); police officers (4) Police Officer 2 Zandro B. Llacuna (PO2 Llacuna), (5) Senior Police Officer 4 Ronald Alvaira (SPO4 Alvaira), and (6) Senior Police Officer 3 Valerian Papelleras (SPO3 Papelleras); and (7) Philippine Overseas Employment Administration (POEA) Representative Eraida Dumigpi (POEA Rep. Dumigpi).⁸

Ramirez testified that sometime in March 2009, he was referred to Jennifer Magat (Magat) who, at that time, was in Bongabon, Nueva Ecija looking for job applicants. Magat instructed him to go to a medical clinic in Malvar Street, Manila and paid ₱5,000.00 for the processing of documents. Thereafter, Magat introduced him to appellant, whom she identified as her boss. Appellant represented herself as a licensed agent of Pert/CPM Manpower Exponents Company, Inc. (Pert/CPM Manpower) and promised him that he would be deployed to Qatar as a waiter within six (6) months. Afterwards, appellant took the job application documents of Ramirez for processing and Ramirez paid her a total of ₱34,000.00 as payment for the training fee, medical examination, visa application, and POEA Certificate. Ramirez demanded for a receipt but appellant did not issue one. Eventually,

⁵ Id. at 112-113, 191.
⁶ Id. at 113.
⁷ Id. at 114.
⁸ Id. at 115-123.

Ramirez and the other complainants discovered that appellant was not an agent of Pert/CPM Manpower and reported the matter to PNP-CIDG. Police officers took Ramirez's statement and thereafter, devised a plan to conduct an entrapment operation against appellant. During the entrapment operation, Tucay, Yambao, and Richard Peroche⁹ (Peroche), handed their payments to appellant who was thereafter, apprehended.¹⁰

Tucay testified that in April 2009, she met Magat, who instructed her and a certain Emil Catacutan to go to Manila if they wanted to apply for work abroad. In Manila, Tucay paid Magat ₱8,000.00 for her medical examination and processing of documents. Tucay kept following up the status of her application but Magat insisted that these were still being processed. Tucay threatened to file a case against Magat, who in turn, returned ₱5,000.00 to her.

Magat introduced Tucay and the latter's boyfriend, Yambao, to appellant whom she identified as her boss. Appellant told Tucay and Yambao that she will be the one to process their applications. Appellant promised Tucay that she would be hired as a receptionist while Yambao would be hired as a mechanical engineer. In exchange for appellant's services, she paid appellant a total of ₱43,500.00. However, Tucay was not deployed to Qatar as promised, instead appellant asked for an additional ₱5,000.00 from Tucay, Yambao, and Peroche for the issuance of a POEA Certificate. Meanwhile, Tucay, Peroche, and Yambao discovered that appellant was not a licensed agent so they reported her to the PNP. During the entrapment operation, Tucay, Yambao, and Peroche met appellant to pay her the additional amounts and they were accompanied by police officers wearing civilian clothes. After Peroche handed appellant the envelope containing the marked money, the police officers arrested appellant.¹¹

Yambao corroborated the testimony of Tucay to the effect that appellant promised that she would process their job applications for abroad. Yambao paid appellant ₱37,500.00 as payment for his medical examination and processing fee. Yambao likewise confirmed that appellant demanded from them an additional ₱5,000.00 for the release of their POEA Certificates. During the entrapment operation, Yambao confirmed that after Peroche paid appellant the marked money, the police officers arrested appellant.¹²

PO2 Llacuna and SPO3 Papelleras conducted the entrapment operation against appellant. PO2 Llacuna stated that on 12 May 2009, two (2) pieces of ₱100.00 bills containing ultraviolet fluorescent powder

⁹ One of the complainants in the Illegal Recruitment in Large Scale under Criminal Case No. 10-276564 but whose individual case for Estafa against appellant docketed as Criminal Case No. 10-276567 did not prosper as Richard Peroche did not testify to substantiate his claim.

¹⁰ TSN, 19 October 2010, pp. 3-46.

¹¹ Id. at 26-93.

¹² TSN, 16 March 2011, pp. 2-40.

(marked money) were given to the complainants. The police officers proceeded to Jollibee, Taft Avenue corner Pedro Gil Street, Manila (Jollibee Pedro Gil) for the operation. He was assigned as the perimeter backup and was in uniform while three (3) police officers wearing civilian clothes were inside Jollibee Pedro Gil. When SPO3 Papelleras gave the pre-arranged signal, he went inside Jollibee Pedro Gil and assisted in the arrest of appellant. Appellant was brought to the crime laboratory where her hands yielded positive results for the presence of ultraviolet fluorescent powder, the same substance used on the marked money.¹³

SPO3 Papelleras confirmed that an entrapment operation was conducted in Jollibee Pedro Gil. Donning civilian clothes, he observed Tucay, Peroche, and Yambao talking to appellant inside the fast food chain. When Peroche handed the marked money to appellant, he arrested her.¹⁴

Finally, the parties stipulated on the testimonies of POEA Rep. Dumigpi and SPO4 Alvaira. As regards POEA Rep. Dumigpi: (a) she was the duly authorized representative of the POEA; and (b) she brought a POEA Certification stating that appellant is neither licensed nor authorized to recruit workers for overseas employment.¹⁵ Meanwhile, with regard to SPO4 Alvaira: (a) he was the investigator of the case; (b) he was part of the entrapment operation but was not inside Jollibee Pedro Gil when it transpired; (c) he prepared the marked money; (d) he took and prepared the individual *Sinumpaang Salaysay*¹⁶ of the complainants prior to the entrapment operation; (e) he took and prepared the *Pinagsamang Sinumpaang Salaysay*¹⁷ of the complainants; (f) he prepared the booking sheet; and (g) he referred appellant for laboratory examination and thereafter, endorsed the latter for inquest proceedings.¹⁸

Version of the Defense

The defense presented appellant as the sole witness who interposed the defense of denial and claimed that she, too, was seeking employment abroad.

Appellant narrated that she met Ramirez at Angelicum Clinic when they were both undergoing medical examination for overseas employment. Thereafter, Ramirez introduced her to Tucay. Tucay and Ramirez had planned to transfer to her agency but this plan did not push through when she was accosted by the PNP-CIDG.

¹³ TSN, 11 November 2011, pp. 2-25.

¹⁴ TSN, 01 December 2011, pp. 9-35.

¹⁵ CA *rollo*, pp. 120, 196.

¹⁶ Not attached to the *rollo*.

¹⁷ Not attached to the *rollo*.

¹⁸ TSN, 01 December 2011, pp. 2-8.

On the day of the entrapment operation, appellant claimed that she met Tucay and Yambao at Jollibee Pedro Gil. While they were eating, Tucay suddenly shouted, "*Hulihin niyo na yan*" and the police officers appeared to apprehend her. Appellant was shocked that the complainants identified her as an illegal recruiter. On the way to the police station, a female police officer held her hands, comforting her. Thereafter, she was brought to the crime laboratory for examination. Appellant claimed that she was framed, surmising that the female police officer she met earlier had clandestinely placed ultraviolet fluorescent powder on her hands.

Finally, appellant denied knowing Magat, claiming that she knew of her as the person who victimized Tucay earlier. She was jobless at that time and was likewise seeking employment abroad and thus, familiar with some of the basic requirements like passport, medical examination, placement fees, and tickets.¹⁹

RTC Ruling

On 23 July 2013, the RTC rendered a Decision,²⁰ finding appellant

¹⁹ TSN, 21 March 2013, pp. 2-37.

²⁰ CA *rollo*, pp. 111-130. The dispositive portion of which states:

WHEREFORE, premises considered, judgment is hereby rendered against **ERNALYN PALICPIC y MENDOZA**, alias "Ernelyn Mendoza[']", ["Lyn/Malyn[']", as follows:

1. In *Criminal Case No. 10-276564*, for the offense of Illegal Recruitment in large scale, the Court finds accused ERNALYN PALICPIC Y MENDOZA **GUILTY** beyond reasonable doubt of the said offense and she is hereby sentenced to suffer the penalties of life imprisonment and fine of Five Hundred Thousand Pesos ([P]500,000.00);

2. In *Criminal Case No. 10-276565*, for the Crime of Estafa (under Article 315, 2 (a) of the Revised Penal Code), the Court finds accused ERNALYN PALICPIC Y MENDOZA **GUILTY** beyond reasonable doubt of the crime of Estafa and she is hereby sentenced to suffer the indeterminate imprisonment of Six (6) years and One (1) day of Prision Mayor minimum as minimum to eight (8) years and One (1) day of Prision Mayor Medium as Maximum.

Accused is also ordered to indemnify private complainant Christopher Yambao the amount of [P]37,500.00 representing the accused's civil liability therefore (sic);

3. In *Criminal Case No. 10-276566*, for the crime of Estafa (under Article 315, 2 (a) of the Revised Penal Code[]), the Court finds accused ERNALYN PALICPIC y MENDOZA **GUILTY** beyond reasonable doubt of the Crime of Estafa and she is hereby sentenced to suffer the indeterminate imprisonment of six (6) years and one (1) day of Prision Mayor minimum as minimum to Nine (9) years and One (1) day of Prision Mayor medium as maximum.

Accused is also ordered to indemnify complainant Mary Ann Tucay the amount of Forty Three Thousand Five Hundred Pesos ([P]43,500.00) representing the accused's civil liability therefore(sic);

4. In *Criminal Case No. 10-276567*, for the Crime of Estafa (under Article 315, (2) a of the Revised Penal Code[]), the Court finds the accused ERNALYN PALICPIC Y MENDOZA **NOT GUILTY** beyond reasonable doubt and she is hereby accordingly **ACQUITTED** of the charge, and

5. In *Criminal Case No. 10-276568*, for Estafa (under Article 315[,] 2 (a) of the Revised Penal Code), the Court finds accused Ernelyn Palicpic y Mendoza[,] **GUILTY** beyond reasonable doubt of the said offense and she is hereby sentenced to suffer the indeterminate imprisonment of Six (6) years and One (1) day of Prision Mayor minimum as minimum to Eight (8) years and One (1) day of Prision Mayor Medium as Maximum.

Accused is also ordered to indemnify private complainant Edgardo Ramirez the amount of Thirty Four Thousand Pesos ([P]34,000.00) representing the accused (sic) civil liability therefore (sic).

SO ORDERED. (Emphasis and italics in the original)

guilty beyond reasonable doubt of the offense of Illegal Recruitment in Large Scale and three (3) counts of Estafa. In so ruling, the RTC held that the complainants' positive, consistent, and categorical testimonies as to how appellant defrauded them of their money outweigh appellant's defense of pure denial. Likewise, the RTC noted that appellant never contested that she received money from the complainants.²¹

CA Ruling

In a Decision²² dated 23 August 2017, the CA sustained the judgment of the lower court, stating that the prosecution was able to establish all the elements of Illegal Recruitment in Large Scale and Estafa beyond reasonable doubt. The CA considered doubtful appellant's defense that she was a fellow aspiring overseas Filipino worker in view of her failure to produce any documentation to that effect. The CA however modified the penalties imposed to properly graduate the same in accordance with the Indeterminate Sentence Law²³ and to provide for the imposition of six percent (6%) interest *per annum* on the civil liabilities awarded.

Upon Motion for Reconsideration,²⁴ appellant prayed, among others,

²¹ Id. at 128-129.

²² Penned by Associate Justice Maria Elisa Sempio Diy, with Associate Justices Celia C. Librea-Leagogo and Pablito A. Perez, concurring; id. at 189-222. The dispositive portion of which states:

WHEREFORE, premises considered, the instant Appeal filed by accused-appellant Ernalyn Palicpic y Mendoza alias "Ermalyn Mendoza", "Lyn", and "Malyn" is hereby **DENIED**. The assailed Decision dated July 23, 2013 of Branch 47, Regional Trial Court of Manila in Criminal Case No. 10-276564 finding accused-appellant **GUILTY** beyond reasonable doubt of the crime of illegal recruitment in large scale and is hereby sentenced to suffer the penalty of life imprisonment and a fine of five hundred thousand pesos (PhP500,000.00) is **AFFIRMED** with the following **MODIFICATIONS**:

1. In Criminal Case No. 10-276565, accused-appellant is found **GUILTY** beyond reasonable doubt of the crime of estafa as defined and punished under Article 315(2)(a) of the Revised Penal Code and is hereby sentenced to suffer an indeterminate penalty of four (4) years of *prision correccional* as minimum to seven (7) years, eight (8) months, and twenty-one (21) days of *prision mayor* as maximum. Furthermore, accused-appellant is hereby ordered to indemnify private complainant Christopher C. Yambao the amount of thirty-seven thousand five hundred pesos (PhP37,500.00).

2. In Criminal Case No. 10-276566, accused-appellant is found **GUILTY** beyond reasonable doubt of the crime of estafa as defined and punished under Article 315(2)(a) of the Revised Penal Code and is hereby sentenced to suffer an indeterminate penalty of four (4) years of *prision correccional* as minimum to eight (8) years, eight (8) months, and twenty-one (21) days of *prision mayor* as maximum. Furthermore, accused-appellant is hereby ordered to indemnify private complainant Mary Ann Dela Cruz Tucay the amount of forty-three thousand five hundred pesos (PhP43,500.00).

3. In Criminal Case No. 276568, accused-appellant is found **GUILTY** beyond reasonable doubt of the crime of estafa as defined and punished under Article 315 (2)(a) of the Revised Penal Code and is hereby sentenced to suffer an indeterminate penalty of four (4) years of *prision correccional* as minimum to seven (7) years, eight (8) months, and twenty-one (21) days of *prision mayor* as maximum. Furthermore, accused-appellant is hereby ordered to indemnify private complainant Edgardo M. Ramirez, Jr. the amount of thirty-four thousand pesos (PhP34,000.00).

4. Interest at the rate of 6% *per annum* is imposed on the civil liabilities awarded, to be computed from the finality of this decision until such amounts are fully paid.

SO ORDERED. (Emphasis and italics in the original)

²³ Act No. 4103, as amended.

²⁴ CA *rollo*, pp. 232-238.

the application of the provisions of RA 10951²⁵ which effectively reduced the penalty imposed for the crime of Estafa based on the amount involved.

On 30 January 2018, the appellate court rendered the Amended Decision²⁶ which partially granted appellant's Motion and reduced the penalty of imprisonment for the three (3) counts of Estafa in view of RA 10951, the dispositive portion of which reads:

WHEREFORE, premises considered, the Motion for Reconsideration filed by Ernalyne Palicpic y Mendoza alias "Ernalyne Mendoza", "Lyn", and "Malyn" is **PARTLY GRANTED**.

Accordingly, the Decision dated August 23, 2017 of this Court: (1) finding accused-appellant Ernalyne Palicpic y Mendoza alias "Ernalyne Mendoza", "Lyn", and "Malyn" GUILTY beyond reasonable doubt of the crime of illegal recruitment in large scale and sentencing accused-appellant to suffer the penalty of life imprisonment and a fine of five hundred thousand pesos (PhP500,000.00) in Criminal Case No. 10-276564; (2) finding accused-appellant GUILTY beyond reasonable doubt of the crime of estafa as defined and punished under Article 315(2)(a) of the Revised Penal Code in Criminal Case No. 10-276565 and ordering accused-appellant to indemnify private complainant Christopher C. Yambao the amount of thirty-seven thousand five hundred pesos (PhP37,500.00); (3) finding accused-appellant GUILTY beyond reasonable doubt of the crime of estafa as defined and punished under Article 315(2)(a) of the Revised Penal Code in Criminal Case No. 10-276566 and ordering accused-appellant to indemnify private complainant Mary Anne Dela Cruz Tucay the amount of forty-three thousand five hundred pesos (PhP43,500.00); (4) finding accused-appellant GUILTY beyond reasonable doubt of the crime of estafa as defined and punished under Article 315(2)(a) of the Revised Penal Code in Criminal Case No. 10-276568 and ordering accused-appellant to indemnify private complainant Edgardo M. Ramirez, Jr. the amount of thirty-four thousand pesos (PhP34,000.00); and (5) imposing interest at the rate of 6% *per annum* on the civil liabilities awarded, to be computed from the finality of the Decision until such amounts are fully paid, is **AFFIRMED** with the following **MODIFICATIONS**:

1. In Criminal Case No. 10-276565, accused-appellant is hereby sentenced to suffer the straight penalty of imprisonment of four (4) months and one (1) day of *arresto mayor*:

2. In Criminal Case No. 10-276566, accused-appellant is hereby sentenced to suffer an indeterminate penalty of three (3) months of *arresto mayor*, as minimum, to one (1) year and eight (8) months of *prision correccional*, as maximum.

3. In Criminal Case No. 10-276568, accused-appellant is hereby sentenced to suffer the straight penalty of imprisonment of four (4) months and one (1) day of *arresto mayor*:

²⁵ An Act Adjusting the Amount or the Value of Property and Damage on which a Penalty is Based, and The Fines Imposed Under the Revised Penal Code, Amending for the Purpose Act No. 3815, Otherwise Known as "The Revised Penal Code, as Amended" (2017).

²⁶ *Rollo*, pp. 2-11.

SO ORDERED.²⁷

The Issue

Whether the guilt of appellant for the crimes of Illegal Recruitment in Large Scale and Estafa were proven beyond reasonable doubt.

The Court's Ruling

After a judicious study of the case, the Court resolves to dismiss the appeal for failure of appellant to sufficiently show that the CA committed any reversible error in rendering the Amended Decision as to warrant the exercise of the Court's appellate jurisdiction. Thus, the Court sustains appellant's conviction for Illegal Recruitment in Large Scale and three (3) counts of Estafa. However, the Court deems it proper to further modify the penalties for Estafa in view of the Indeterminate Sentence Law.

The offense of Illegal Recruitment in Large Scale has the following elements: (1) the person charged undertook any recruitment activity as defined under Section 6 of RA 8042; (2) accused did not have the license or the authority to lawfully engage in the recruitment of workers; and (3) accused committed the same against three or more persons individually or as a group.²⁸

These elements are obtaining in this case.

First, the RTC found appellant to have undertaken a recruitment activity without having the requisite license and/or authority when she promised the complainants employment in Qatar for a fee.²⁹ This factual finding was affirmed by the CA who observed that:

A thorough examination of the evidence on record reveals that the prosecution clearly established that accused-appellant represented herself to be a licensed agent of the local manning agency named Pert/CPM Manpower Exponents Company Incorporated x x x. Accused-appellant induced, offered, and promised Edgardo Ramirez, Mary Ann Tucay, and Christopher Yambao ("private complainants", collectively) employment in Qatar – Ramirez would be hired as a waiter, Tucay would be hired as a receptionist, and Yambao would be hired as a mechanical engineer. Private complainants were convinced and made to believe that accused-appellant was authorized to hire them and capable of sending them to Qatar. Accused-appellant took the resumes, medical examination results, and other documentation from Ramirez, Tucay, and Yambao, promising that accused-appellant would be the one to process their applications. In

²⁷ Id. at 9-10.

²⁸ *People v. Matheus*, 810 Phil. 626, 636 (2017).

²⁹ CA rollo, p. 128.

the guise of processing their applications, accused-appellant asked for sums of money from private complainants. x x x Despite receiving sums of money from private complainants, accused-appellant did not issue any receipts. However, private complainants were not deployed to Qatar. This prompted Ramirez, Yambao, and another aspiring applicant, Richard Peroche, to verify with the Philippine Overseas Employment Administration (POEA) whether accused-appellant had a license to recruit. They discovered that accused-appellant was neither licensed nor authorized to recruit workers for overseas employment, as evinced by the POEA Certification dated May 24, 2011.³⁰

As consistently adhered to by this Court, the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge,³¹ who had the unmatched opportunity to observe the witnesses and to assess their credibility by the various *indicia* available but not reflected on the record. When such findings have been affirmed by the CA, these are generally binding and conclusive upon the Court. This attains more significance in this case as appellant's bare denial cannot prevail over the positive and categorical testimonies³² of Ramirez, Tucay, and Yambao. Absent any evidence that the complainants were motivated by improper motives, the trial court's assessment of the credibility of the witnesses shall not be interfered with by this Court,³³ as in this case.

Second, the Certification issued by the POEA unmistakably reveals that appellant neither had the license nor the authority to recruit workers for overseas employment. This fact was stipulated upon by the defense when the testimony of POEA Rep. Dumigpi was dispensed with. *Third*, there are at least three (3) victims in this case which makes appellant liable for large-scale illegal recruitment. Clearly, the existence of the offense of Illegal Recruitment in Large Scale was duly proven by the prosecution.

Meanwhile, the elements of Estafa as charged are, namely: (1) the accused defrauded another by abuse of confidence or by means of deceit; and (2) the offended party, or a third party suffered damage or prejudice capable of pecuniary estimation.³⁴ The active representation by appellant of having the capacity to deploy Ramirez, Tucay, and Yambao abroad despite not having the authority or license to do so from the POEA constituted deceit as the first element of Estafa. Her representation induced the complainants to part with their money, resulting in damage that is the second element of the Estafa. Considering that the damage resulted from the deceit, the CA's affirmance of her guilt for Estafa as charged was in order.

Appellant's argument that there was no proof that she received money from the complainants deserves no credence. Suffice it to say that money is

³⁰ Id. at 209-210.

³¹ *People v. Mateo*, 759 Phil. 179, 183-184 (2015).

³² See *People v. Ganigan*, 584 Phil. 710 (2008).

³³ *People v. Gallo*, 630 Phil. 153, 168-169 (2010).

³⁴ *People v. Tolentino*, 762 Phil. 592, 614 (2015).

not material to a prosecution for illegal recruitment considering that the definition of “illegal recruitment” under the law includes the phrase “whether for profit or not.”³⁵ Besides, even if there is no receipt for the money given by the complainants to appellant, the former’s respective testimonies and affidavits clearly narrate the latter’s involvement in the prohibited recruitment.

Penalties

Finally, as to the penalties imposed, the CA was correct in applying the provisions of RA 10951 to the imposable penalties for Estafa based on the amount defrauded in its Amended Decision. However, the Court deems it proper to further modify the penalties to properly apply the provisions of the Indeterminate Sentence Law. Settled is the rule that an appeal in a criminal case throws the entire case wide open for review and confers the appellate court full jurisdiction over the case and renders such court competent to examine the records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.³⁶

The defrauded amounts involved in this case are: ₱43,500.00 in *Criminal Case No. 10-276566*; ₱37,500.00 in *Criminal Case No. 10-276565*; and ₱34,000.00 in *Criminal Case No. 10-276568*.

Under RA 10951,³⁷ when the amount involved is over ₱40,000.00 but not exceeding ₱1,200,000.00, the prescribed penalty is only *arresto mayor*, in its maximum period to *prision correccional*, in its minimum period, *i.e.*, four (4) months and one (1) day to two (2) years and four (4) months. However, applying the Indeterminate Sentence Law, the minimum term should be taken from *arresto mayor*, in its minimum and medium periods, *i.e.*, one (1) month and one (1) day to four (4) months, while the maximum term should be within the medium period of the prescribed penalty, *i.e.*, one (1) year and one (1) day to one (1) year and eight (8) months there being no aggravating or mitigating circumstances present in this case. Thus, the Court finds it proper to impose a penalty of four (4) months of *arresto mayor*, as minimum, to one (1) year and one (1) month of *prision correccional*, as maximum.

³⁵ *People v. Mateo*, supra note 31, at 184.

³⁶ See *People v. Racho*, 819 Phil. 137 (2017).

³⁷ The relevant provision, as amended, reads:

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

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

X X X X

3rd. The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period, if such amount is over Forty thousand pesos (₱40,000) but does not exceed One million two hundred thousand pesos (₱1,200,000).

4th. By *arresto mayor* in its medium and maximum periods, if such amount does not exceed Forty thousand pesos (₱40,000): X X X.


On the other hand, if the amount involved is less than ₱40,000.00, the impossible penalty is only *arresto mayor*, in its medium and maximum periods, *i.e.*, two (2) months and one (1) day to six (6) months, as is applicable to Criminal Case Nos. 10-276565 and 10-276568. The provisions of the Indeterminate Sentence Law no longer apply because the impossible penalty is less than one (1) year. Thus, a straight penalty of six (6) months of *arresto mayor*, in its maximum period is proper.³⁸

WHEREFORE, the appeal is **DISMISSED**. The Amended Decision dated 30 January 2018 in CA-G.R. CR-HC No. 06619 is **AFFIRMED** with **MODIFICATIONS** as to the impossible penalties for Estafa:

1. In Criminal Case No. 10-276565, appellant is hereby sentenced to suffer the penalty of imprisonment of six (6) months of *arresto mayor*;
2. In Criminal Case No. 10-276566, appellant is hereby sentenced to suffer an indeterminate penalty of four (4) months of *arresto mayor*, as minimum, to one (1) year and one (1) month of *prision correccional*, as maximum; and
3. In Criminal Case No. 10-276568, appellant is hereby sentenced to suffer the penalty of imprisonment of six (6) months of *arresto mayor*.

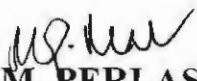
The rest of the assailed Decision **STANDS**.

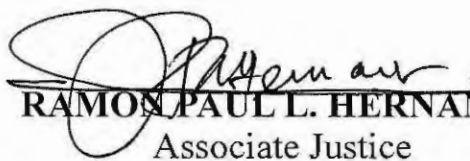
SO ORDERED.


EDGARDO L. DELOS SANTOS
Associate Justice

³⁸ See *People v. Racho*, supra note 36.

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

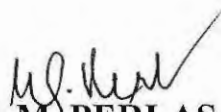

RAMON PAUL L. HERNANDO
Associate Justice

(On Official Leave)
HENRI JEAN PAUL B. INTING
Associate Justice

(On Leave)
PRISCILLA J. BALTAZAR-PADILLA
Associate Justice

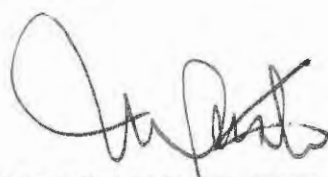
ATTESTATION

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.


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson, Second Division

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.


DIOSDADO M. PERALTA
Chief Justice