REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

Third Division

PEOPLE OF THE PHILIPPINES, Plaintiff,	**CTA CRIM. CASE NO. O-246** Re: Violation of Section 255, 1997 NIRC
-versus-	Members: ***BAUTISTA,*** Chairperson ***FABON-VICTORINO,*** and ***RINGPIS-LIBAN,*** JJ.
LUZ A. SANTOS AND RICARDO A. SANTOS, Accused.	Promulgated: MAY 20 2015 1:35 p.m.

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DECISION

BAUTISTA, J.:

THE CASE

The accused, **Luz A. Santos** and **Ricardo A. Santos**, being legal heirs and taxpayers, are charged for violation of Section 255 of the 1997 National Internal Revenue Code, as amended ("NIRC",) for failure to file an Estate Tax Return and to pay the Estate Tax due thereon by use of a falsified Deed of Transfer of real property and other documents.

THE FACTS OF THE CASE

On December 12, 2007, the prosecution filed an Information[1] before the First Division of the Court of Tax Appeals ("CTA") charging accused Felino A. Santos, Luz A. Santos and Ricardo A. Santos, as follows:

[1] *Records,* CTA Crim Case No. O-246, pp. 7-9, with annexes.

> "The undersigned State Prosecutor of the Department of Justice, hereby accuses FELINO A. SANTOS, LUZ A. SANTOS and RICARDO A. SANTOS of violation of Section 255 of the National Internal Revenue Code of 1997, committed as follows:
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> > 'That on or about November 15, 2003, or on dates thereafter, in Makati City, and within the jurisdiction of this Honorable Court, the above-named accused, being taxpayers and legal heirs of the estate of the late Iluminada A. Santos, and with intent to deprive the government of the tax due it, did then and there, willfully, unlawfully and feloniously, conspired and confederated with each other by failing to file estate tax return and pay the estate tax due with the Bureau of Internal Revenue in accordance with the law, arising from the death of said Iluminada A. Santos who died on the aforestated date, through the use of falsified deed of transfer of real property and other documents, to the damage and prejudice of the Government in the amount of Twelve Million Seven Hundred Fifty Eight Thousand Two Hundred Fifteen Pesos and Eighty Seven Centavos (Php 12,758,215.87), more or less, exclusive of other penalties, surcharges and interest.
> >
> > CONTRARY TO LAW.'

On October 27, 2011, finding the existence of probable cause to hold the accused liable for the commission of the offense as charged, the First Division issued a Resolution[2] ordering the issuance of a Warrant of Arrest.

On November 4, 2011, counsel for accused filed his Entry of Appearance[3] and manifested that accused Felino A. Santos had died

[2] *Id.*, pp. 181-182.
[3] *Id.*, pp. 183-185.

Likewise, he filed a Manifestation and Motion to Defer Determination of Probable Cause.[4]

Despite the Manifestation, a Warrant of Arrest[5] was issued against all three (3) accused at 4746 Salamanca St., Poblacion, Makati City on November 8, 2011.

On November 24, 2011, the First Division issued a Resolution[6] giving the prosecution fifteen (15) days from notice within which to file its comment to the above-stated Manifestation and Motion to Defer Determination of Probable Cause.

In a January 5, 2012 Resolution[7] of the First Division, it was noted that the three (3) accused were no longer residing in the stated address. Consequently, on January 9, 2012, Alias Warrants of Arrest[8] were issued.

On January 31, 2012, the First Division issued a Resolution[9] denying the Manifestation and Motion to Defer Determination of Probable Cause for lack of merit.

Accused Luz A. Santos and Ricardo A. Santos filed a Manifestation[10] with the First Division on March 29, 2012, submitting themselves to the latter's jurisdiction as soon as they arrive in the Philippines, being residents of California, USA.

In a Resolution dated April 17, 2012, the First Division accepted and approved the accused Ricardo A. Santos' voluntarily surrender to its jurisdiction and the required bail bond.[11] Hence, the Warrant of Arrest against him was lifted and recalled.[12]

During his arraignment on April 25, 2012, accused Ricardo A. Santos pleaded "not guilty" to the crime charged,[13] with a

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[4] *Id.*, pp. 186-196.
[5] *Id.*, p. 204.
[6] *Id.*, pp. 199-200.
[7] *Id.*, p. 128.
[8] *Id.*, pp. 209-210.
[9] *Id.*, pp. 212-215.
[10] *Id.*, pp. 224-227.
[11] *Id.*, pp. 244-245.
[12] *Id.*
[13] *Id.*, pp. 248-249.

manifestation that Felino A. Santos died on January 9, 2011 and that co-accused Luz A. Santos is 80 years old and is staying in a nursing home.[14]

In an Order[15] dated April 25, 2012, the First Division dismissed the case against accused Felino A. Santos.

On May 11, 2012, Ricardo A. Santos executed a Waiver of Appearance, waiving his right to be present and to appear during trial.[16]

Pre-trial ensued. Both parties admitted that *(1)* the accused Ricardo A. Santos, who was arraigned by the First Division on April 25, 2012, is the same person charged in the Information under CTA Crim Case No. O-246; *(2)* the First Division has jurisdiction over the case and over the person of named accused; *(3)* the accused Ricardo A. Santos has long been residing in California, USA, as a US citizen and permanent resident and employed as a tax auditor at the Florida Department of Revenue since November 1989; *(4)* Iluminada A. Santos died on November 15, 2003; *(5)* the Death Certificate of Iluminada A. Santos is authentic and duly executed; and *(6)* both accused Luz A. Santos and Ricardo A. Santos are the legal heirs of the deceased Iluminada A. Santos.[17]

On October 30, 2012, plaintiff filed its Formal Offer of Evidence[18], to which accused Ricardo A. Santos filed his Comment[19] on November 19, 2012.

Accused filed their Motion for Leave of Court to File Demurrer to Evidence[20] on December 17, 2012 based on the ground that the prosecution failed to prove the crime of violation of Section 255 of the 1997 NIRC. Plaintiff responded with its Comment/Opposition[21] thereto on January 21, 2013. On January 29, 2013, the First Division issued a Resolution[22] granting accused's Motion for Leave of Court to File Demurrer to Evidence.

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[14] *Id.*, pp. 248-249.
[15] *Id.*
[16] *Id.*, pp. 355-357.
[17] *Id.*, pp. 386-398.
[18] *Id.*, pp. 619-629.
[19] *Id.*, pp. 638-649.
[20] *Id.*, pp. 652-662.
[21] *Id.*, pp. 667-678.
[22] *Id.*, p. 681.

On February 21, 2013, accused filed their Demurrer to Evidence (with Leave of Court)[23], to which plaintiff filed its Comment/Opposition (Demurrer to Evidence)[24] on March 8, 2013.

In an Order[25] dated May 7, 2013, the case was transferred to the Third Division ("Court") of the CTA pursuant to CTA Administrative Circular No. 1-2003, "Reorganizing the Three (3) Divisions of the Court of Tax Appeals."

On June 5, 2013, the Court issued a Resolution[26] denying accused's Demurrer to Evidence (with Leave of Court) for lack of merit.

Accused then filed their Motion for Reconsideration (Re: Resolution promulgated 05 June 2013)[27] on July 8, 2013. Hence, plaintiff filed its Comment/Opposition (Motion for Reconsideration)[28] on July 18, 2013. The Court then denied accused's Motion for Reconsideration in a Resolution[29] dated August 1, 2013.

On March 3, 2014, Accused's Formal Offer of Evidence[30] was filed, to which plaintiff responded with its Comment/Opposition (Accused's Formal Offer of Evidence)[31] on March 11, 2014.

Accused filed their Memorandum[32] on April 25, 2014 and plaintiff filed its Manifestation with Motion to Admit Attached Plaintiff's Memorandum[33] on May 14, 2014.

In a Resolution[34] dated May 23, 2014, the case was deemed submitted for decision.

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[23] *Id.*, pp. 684-737.
[24] *Id.*, pp. 792-812.
[25] *Id.*, p. 816.
[26] *Id.*, pp. 818-828.
[27] *Id.*, pp. 829-848.
[28] *Id.*, pp. 851-857.
[29] *Id.*, pp. 860-862.
[30] *Id.*, pp. 976-983.
[31] *Id.*, pp. 987-992.
[32] *Id.*, pp. 1000-1065.
[33] *Id.*, pp. 1069-1097.
[34] *Id.*, pp. 1100-1101.

Hence, this decision.

ISSUE

WHETHER OR NOT ACCUSED LUZ A. SANTOS AND RICARDO A. SANTOS ARE GUILTY OF VIOLATING SECTION 255 OF THE 1997 NIRC FOR FAILURE TO FILE AN ESTATE TAX RETURN AND TO PAY THE TAX DUE THEREON BY MEANS OF A FALSIFIED DEED OF TRANSFER OF REAL PROPERTY AND OTHER DOCUMENTS.

Arguments of the Prosecution

The prosecution alleges that both accused are guilty of the crime charged, of failure to file a return and pay the tax under Section 255 of the 1997 NIRC, for the following reasons: *(1)* that the accused, who are heirs, are the persons required under Sections 90(B) and 91 of the 1997 NIRC or by rules and regulations to file an Estate Tax Return and pay the tax due thereon; *(2)* that the Deed of Transfer was executed by the accused in order to avoid the payment of Estate Tax within six (6) months from the death of the decedent; *(3)* that the accused presented falsified Certificate Authorizing Registration ("CAR") and Tax Clearance Certificate ("TCC") to effect the transfer of the properties without payment of the required taxes; and *(4)* that accused cannot claim the defense of tax amnesty as they failed to prove their availment thereof.

Arguments of the Accused

The accused, on the other hand, claim that the prosecution failed to establish that they committed the offense under Section 255 of the 1997 NIRC by failing to file a return and pay the tax due thereon since payment was made as shown by their availment of tax amnesty and obtaining a TCC.

EVIDENCE PRESENTED

Evidence for the prosecution[35]

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[35] *Id.*, p. 651.

Exhibit "A"	Certificate of Death of Iluminada A. Santos issued by the Department of Health Services of the County of Los Angeles, California, U.S.A..
Exhibit "B"	Letter dated March 29, 2007 from Arnel S.D. Guballa, Chief of the BIR National Investigation Division ("NID") addressed to the Register of Deeds of Makati City.
Exhibits "B-1" to "B-2"	Transfer Certificate of Title No. 220190 registered under the names of Felino A. Santos, Norma C. Santos, Luz A. Santos and Ricardo A. Santos.
Exhibits "B-3" to "B-7"	Certified True Copy of Certificate Authorizing Registration ("CAR") 2003 with Series Number 00053255 under the name of the decedent with attached Certified True Copy of Tax Clearance Certificate OCN 3TA0000173143 and List of Transferor and Transferees on file with the Register of Deeds of Makati.
Exhibit "C"	Certified True Copy of a duly notarized Deed of Transfer, dated and executed on June 7, 2004, which appears to have been executed by and between decedent and the accused for the transfer of the real property covered by TCT No. 149394.
Exhibit "D"	Certified True Copy of CAR 2003 00053255 with indicated Tax Clearance Certificate referring to OCN 3TA0000173143 from the Register of Deeds.
Exhibit "E"	Tax Clearance Certificate with OCN 3TA0000173143 purportedly issued to decedent and the accused.
Exhibit "F"	Certified True Copy of TCT No. 149394 under the name of decedent with the word "CANCELLED".
Exhibit "G"	Certified True Copy of TCT No. 220190 registered under the names of the accused.
Exhibit "H"	Memorandum/Certification dated March 27, 2007 from Atty. James R. Ferrer, the former Assistant Revenue District Officer ("ARDO") of Revenue District Office ("RDO") No. 46, Cainta/Taytay, Rizal addressed to the Chief of the BIR-NID with attachments, stating that after verification from the records of their office, CAR 2003 with Series Number 00053255 dated June 9, 2004 appeared to have not been issued by the said district to Iluminada Santos and to the accused but the said Series Number 00053255 appeared to have been issued to Sta. Lucia Realty Development, Inc. as Seller and Sps. David as buyers and not to the accused and Iluminada Santos.
Exhibit "H-1"	Certified True Copy of the CAR 2004 00053255 dated June 9, 2004 issued to Sta. Lucia Realty Development, Inc. as Seller and Sps. David as Buyers.
Exhibits "H-2" to "H-5"	Tax Clearance Certificate OCN 3TA0000173193 with list of transferor and transferee and payment details.
Exhibit "I"	Certified True Copy of the List of Transferors and Transferees from the Register of Deeds of Makati, which is a computer generated list of transferors and transferees with notations "TIN DOES NOT EXIST" written beside the name of decedent and the accused.
Exhibits "I-1," "I-2," "I-1-a," and "I-2-a"	Computer print-out from the BIR Taxpayer Accounting System interface from the user NEFCAROL (Atty. Elmer F. Carolino) with result of inquiry on Tax Identification Number ("TIN")s 231-610-306-000; 231-610-323-0000; 231-611-015-000; 231-611-026-000 allegedly belonging to decedent and the accused with indication that the foregoing TINs do not exist in the BIR Integrated Tax System.
Exhibit "J"	Stipulated Certified True Copy of the Affidavit of Denial by Maria Carpio-Co, BIR Data Verifier (a written statement of Ms. Co) to the effect that she did not affix the words "OK CAR VERIFIED" on CAR No. 2003 00053255 and no such CAR was ever presented to her for verification.
Exhibit "K"	Memorandum with attached Weekly Report of CAR Verification addressed to several RDOs prepared by Ms. Co and a list of CAR verified by Ms. Co in her capacity as BIR Data Verifier.
Exhibit "L"	Certified True Copy of the Computation Matrix prepared by the investigating Revenue Officer showing the deficiency tax liabilities of the accused.
Exhibit "M"	Duly notarized Judicial Affidavit of Revenue Officer Aurora V. Flor, dated June 21, 2012.
Exhibit "N"	Duly notarized Judicial Affidavit of Revenue Officer Angela Marie T. Simpit, dated June 28, 2012.
Exhibit "O"	Duly notarized Judicial Affidavit of Administrative Officer I Maria Carpio-Co, dated July 24, 2012.

Exhibit "P"	Duly notarized Judicial Affidavit of Chief Revenue Officer Atty. Elmer F. Carolino, dated August 3, 2012.

Evidence for the accused[36]

Exhibit "1"	BIR Payment Slip Account No. 072-800001-5, dated February 12, 2008.
Exhibit "2"	Tax Amnesty Payment Form No. 0617, dated February 11, 2008.
Exhibit "2-a"	Stamp Received, dated February 12, 2008 by PNB NPC Branch
Exhibits "3," and "3-a" to "3-c," Inclusive	Tax Clearance Certificate BIR Form No. 2312, OCN 3TA0000275289 dated March 7, 2008, signed by Revenue District Officer Clavelina S. Nacar.
Exhibit "4"	Certificate Authorizing Registration No. 00104831, dated March 11, 2008, bearing the notation, "AVAILED OF TAX AMNESTY."
Exhibit "6"	Deed of Donation executed between Iluminada A. Santos and Felino A. Santos, Luz A. Santos, and Ricardo A. Santos under TCT No. 251963 and 149394, consisting of four (4) pages.
Exhibits "6-b," "6-d," and "6-f," Inclusive	Page 2, 3, 4, respectively of the Deed of Donation.
Exhibits "6-a," "6-c," "6-e," and "6-g," Inclusive	(Dorsal Portion)
Exhibit "10"	Certificate of Employment issued by Los Angeles Service Center on March 9, 2012, certifying that accused Ricardo A. Santos is employed as Tax Auditor, issued by Chun W. (C.W.) Yeung.
Exhibits "11," and "11-a" to "11-d," Inclusive	Passport of accused Ricardo A. Santos.
Exhibit "12"	Judicial Affidavit of Mr. Alberto Juan.

RULING OF THE COURT

At the outset, it must be stated that this decision is limited to accused Ricardo A. Santos. Considering that the Court did not acquire jurisdiction over the person of accused Luz A. Santos, it cannot pass upon her guilt or innocence.[37]

In the Information, accused Ricardo A. Santos was charged of violating Section 255 of the 1997 NIRC by conspiring with his co-accused in failing to file the Estate Tax Return and to pay the Estate Tax due on the estate left by Iluminada A. Santos, with the common intent to deprive the Government of the proper tax due to it in the approximate amount of Php12,758,215.87, exclusive of other penalties, surcharges and interest, through falsifying a Deed of Transfer of real property and other documents.

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[36] *Id.*, pp. 994-995.

[37] Luz A. Santos was neither arrested nor arraigned. According to the Supreme Court case of *Mendoza v. People of the Philippines and Juno Cars, Inc.*, G.R. No. 197293, April 21, 2014, "[j]urisdiction over an accused is acquired when the warrant of arrest is served. Absent this, the court cannot hold the accused for arraignment and trial."

Section 255 of the 1997 NIRC as amended, specifically provides as follows:

> "SECTION 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* — Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct and accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.
>
> Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of an internal revenue office wherein the same was actually filed shall, upon conviction therefor, be punished by a fine of not less than Ten thousand pesos (P10,000) but not more than Twenty thousand pesos (P20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years." [Emphases ours]

The afore-quoted provision enumerates the following offenses, *viz.*:

1. Willful failure to pay tax;

2. Willful failure to make a return;

3. Willful failure to keep any record;

4. Willful failure to supply correct and accurate information;

5. Willful failure to withhold or remit taxes withheld; and

6. Willful failure to refund excess taxes withheld on compensation.

Two (2) of the offenses above-enumerated, which are willful failure to pay tax and willful failure to make a return, are being attributed to accused Ricardo A. Santos. In accordance with the earlier-quoted Section 255, the essential elements of the said offense are:

1. The accused is a person required to make or file a return and/or pay the tax;

2. The accused failed to make or file the return and/or pay the tax at the time required by law; and

3. Failure to make or file the return and/or pay the tax, was willful.

Accused is the person required to make or file a return and/or pay the tax.

The following provisions lifted from the 1997 NIRC relates to the person/s legally obligated to file the Estate Tax Return and pay the Estate Tax.

> "SECTION 90. *Estate Tax Returns.* —
>
> (A) Requirements. — <u>In all cases of transfers subject to the tax imposed herein</u>, or where, though exempt from tax, the gross value of the estate exceeds Two hundred thousand pesos (P200,000), or <u>regardless of the gross value of the estate, where the said estate consists of registered or registrable property such as real property,</u> motor vehicle, shares of stock or other similar property for which a clearance from the Bureau of Internal Revenue is required as a condition precedent for the transfer of ownership

> thereof in the name of the transferee, the executor, or the administrator, or any of the legal heirs, as the case may be, shall file a return under oath in duplicate, setting forth:
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> xxx xxx xxx
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> (B) *Time for Filing.* — For the purpose of determining the estate tax provided for in Section 84 of this Code, the estate tax return required under the preceding Subsection (A) shall be filed within six (6) months from the decedent's death. xxx
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> SECTION 91. *Payment of Tax.* —
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> (A) *Time of Payment.* — The estate tax imposed by Section 84 shall be paid at the time the return is filed by the executor, administrator or the heirs. xxx
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> (C) *Liability for Payment.* — The estate tax imposed by Section 84 shall be paid by the executor or administrator before delivery to any beneficiary of his distributive share of the estate. Such beneficiary shall, to the extent of his distributive share of the estate, be subsidiarily liable for the payment of such portion of the estate tax as his distributive share bears to the value of the total net estate.
>
> For the purpose of this Chapter, the term '*executor*' or '*administrator*' means the executor or administrator of the decedent, or if there is no executor or administrator appointed, qualified, and acting within the Philippines, then any person in actual or constructive possession of any property of the decedent." [Emphases ours]

As provided above, six (6) months after the death of the decedent, it is the duty of the executor, the administrator, or the heirs of the decedent to file the Estate Tax Return. It is also the duty of the said executor, administrator, or heir/s to pay the Estate Tax at the time the return is filed.

In the present case, no one was appointed as executor or administrator. Therefore, the responsibility lies upon the heirs to file the return and pay the tax. On November 15, 2003, Iluminada A. Santos died[38] leaving as one of her heirs herein said accused Ricardo A. Santos[39]. Therefore as an heir, accused Ricardo A. Santos is duty bound to make or file a return and/or pay the tax.

Accused failed to make or file the return and/or pay the tax at the time required by law.

To reiterate, it is the responsibility of accused Ricardo A. Santos to file the Estate Tax Return and pay the Estate Tax. However, records reveal that no Estate Tax Return was executed by the accused after the death of Iluminada A. Santos. Instead, what was entered into was a Deed of Transfer[40] dated June 7, 2004 and an undated Deed of Donation[41] with a *Jurat* dated June 5, 2003.

The Deed of Transfer shows that it was executed after the death of Iluminada A. Santos on November 15, 2003. While the Deed of Donation was acknowledged before a notary public after Iluminada A. Santos' death.

Based on Section 85 of the 1997 NIRC, as amended, the Gross Estate includes all the properties of the decedent at the time of his/her death and all the transfers of the decedent which were made in contemplation of death, to *wit*:

> "SECTION 85. Gross Estate. — <u>The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated:</u> Provided, however, That in the case of a nonresident decedent who at the time of his death was not a citizen of the Philippines, only that part of the entire gross estate which is situated in the Philippines shall be included in his taxable estate.

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[38] *Id.*, p. 265.
[39] *Id.*, Pre-Trial Order, p.387; Transcript of Stenographic Notes ("TSN"), May 23, 2012 hearing, p. 20.
[40] *Id.*, pp. 274-276.
[41] *Id.*, pp. 313-314.

(A) Decedent's Interest.—To the extent of the interest therein of the decedent at the time of his death;

(B) Transfer in Contemplation of Death. — To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after death, or of which he has at any time made a transfer, by trust or otherwise, under which he has retained for his life or for any period which does not in fact end before his death (1) the possession or enjoyment of, or the right to the income from the property, or (2) the right, either alone or in conjunction with any person, to designate the person who shall possess or enjoy the property or the income therefrom; except in case of a bona fide sale for an adequate and full consideration in money or money's worth." [Emphases ours]

In the case at bar, the real properties, inclusive of improvements, were transferred *via* Deed of Donation covering *(a)* a parcel of land situated in the District of Tondo, City of Manila, containing an area of 56.76 sq. meters; *(b)* a parcel of land situated in the Municipality of Makati, Province of Rizal, containing an area of 323 sq. meters; and *(c)* a parcel of land situated in the Municipality of Makati, Province of Rizal, containing an area of 199 sq. meters. On the other hand, the Deed of Transfer includes only the properties defined under *(b)* and *(c)* of the Deed of Donation.

The lands covered by the Deed of Transfer appears to be transferred after the death of the decedent in 2003. On the other hand, the properties in the Deed of Donation (Mortis Causa)[42] were transferred in contemplation of death, as evident in the title of the document as well as its body, which reads: "...the said DONOR by these presents does hereby give, transfer, and convey unto said DONEES, their heirs and assigns, the above-described property with all the buildings and improvements thereon in equal sharing, to become effective upon the death of the DONOR..."[43]

Clearly, all the properties transferred *via* Deed of Transfer and Deed of Donation are part of the Gross Estate and included in the

[42] *Id*, pp. 313-314.
[43] *Id.*, p. 314.

computation of Estate Tax. Accused Ricardo A. Santos should have executed an Estate Tax Return and paid the corresponding tax due thereon, but this he failed to do. Therefore, the second essential element of the crime is present.

That failure to make or file the return and/or pay the tax, was willful.

In order for the act of non-filing of return or non-payment of tax be deemed a criminal act, the act must be "willful," a voluntary, intentional violation of a known legal duty.[44] Willfulness connotes the existence of "knowledge" and "voluntariness," that is, the taxpayer is aware or knows its/his/her tax liability but voluntarily and intentionally refuses to pay.[45]

Willfulness must be proven beyond reasonable doubt. Section 2, Rule 133 of the Rules of Evidence[46] explains, *viz.*:

> "SECTION 2. *Proof beyond reasonable doubt.* — In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. (2a)"

The case of *Monteverde v. People of the Philippines*[47] expounded on the nature of "proof beyond reasonable doubt":

> "xxx In all criminal cases, mere speculations cannot substitute for proof in establishing the guilt of the accused. Indeed, suspicion no matter how strong must never sway judgment. Where there is reasonable doubt, the accused must be acquitted even though their innocence may not have been established. The Constitution presumes a person innocent until proven guilty by proof beyond reasonable doubt. When guilt is not proven with moral certainty, it has been our policy of long standing that the

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[44] Mertens Law of Federal Income Taxation, Volume 15, 1988 Ed., Chapter 55A, p. 76.
[45] *CTA Crim. Case No. O-114*, May 16, 2012.
[46] [REVISED RULES OF COURT] Revised Rules of Evidence (1997), Rule 133.
[47] *Aurea R. Monteverde v. People of the Philippines*, G.R. No. 139610, August 12, 2002, 387 SCRA 196.

> presumption of innocence must be favored, and exoneration granted as a matter of right. Although the evidence for the defense may be frail, criminal conviction must come, not from its weakness, but from the strength of that for the prosecution." [Emphases ours]

Based on the above, it is not required for the defense to prove their innocence. What is required is for the prosecution to prove, through its own evidence, that the accused is guilty of the criminal charges, with moral certainty.

The prosecution, in proving that accused Ricardo A. Santos willfully failed to file an Estate Tax Return and pay the Estate Tax, relied solely on the date of execution provided on the face of the Deed of Transfer.

Records reveal that the Deed of Transfer was executed on June 7, 2004, approximately seven (7) months after the death of Iluminada A. Santos, that it was entered into in Makati City, and that it was acknowledged on the same date before a notary public, also in Makati City.

However, based on the immigration stamps[48] on Ricardo A. Santos' American Passport issued on September 24, 2003, he was in the Philippines only for the following periods: *(a)* February 13, 2004 to February 29, 2004; *(b)* August 26, 2004 to September 5, 2004; *(c)* November 16, 2007 to December 5, 2007; *(d)* August 16, 2008 to September 1, 2008; *(e)* November 14, 2008 to December 2, 2008; *(f)* August 20, 2009 to September 6, 2009; and *(g)* August 20, 2010 to September 7, 2010.

Therefore, the Deed of Transfer was executed at the time Iluminada A. Santos was already dead and Ricardo A. Santos was not in the Philippines. Hence, the Deed of Transfer is highly irregular.

As provided in the case of *Dela Rama v. Papa*[49], improperly notarized documents do not enjoy the presumption of due execution and authenticity, presumptions that attach to notarized documents can be affirmed only so long as it is beyond dispute that the notarization

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[48] *Records,* CTA Crim Case No. O-246, pp. 339-343.
[49] G.R. No. 142309, January 30, 2009, 577 SCRA 233.

was regular.[50] Therefore, the fact that a deed is notarized is not a guarantee of the validity of its contents and the presumption of regularity may be rebutted by clear and convincing evidence to the contrary.[51]

Moreover, no other evidence was presented by the prosecution to link accused Ricardo A. Santos to the execution of the Deed of Transfer. Accused could not have possibly participated in the execution of the Deed of Transfer that allegedly facilitated the issuance of CAR 2003 00053255 and TCC OCN 3TA0000173143, which led to the ultimate transfer of ownership over the subject properties. Since the prosecution failed to prove the connection between accused Ricardo A. Santos and the execution of the documents above-stated, it cannot be said that his failure to file the return and pay the tax were, in fact, willful.

Willfulness involves the mental state of the offender.[52] The fact that the accused paid the Estate Tax in the amount of Php626,761.20 with the intent to avail of the tax amnesty, albeit invalid[53], shows the lack of intent to avoid tax liability.

Considering the foregoing, as to the last element of the offense charged, the Court finds insufficient proof.

It may be impossible to imagine for someone, other than the heirs of Iluminada A. Santos, including accused Ricardo A. Santos, to falsify the Deed of Transfer and commit all the acts leading to the transfer of title over the properties involved since it is the heirs who are benefitted thereby. However, the mere fact that accused Ricardo A. Santos benefits from the forgery does not mean that he is the author thereof.[54]

Therefore, the Court is convinced that the prosecution has failed to establish the guilt of accused Ricardo A. Santos beyond reasonable doubt.

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[50] *Id.*

[51] *San Juan v. Offril*, G.R. No. 154609, April 24, 2009, 586 SCRA 439.

[52] *Realda v. New Age Graphics, Inc.*, G.R. No. 192190, 25 April 2012, 671 SCRA 410.

[53] *Records*, p. 305.

[54] There is, however, a disputable presumption that one found in possession of and who used a forged document is the forger of said document (*Nierva v. People*, G.R. No. 153133, 26 September 2006, 503 SCRA 114).

WHEREFORE, premises considered, accused Ricardo A. Santos is hereby **ACQUITTED** of the crime charged.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen S L

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice