REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

ENRIQUITO DIZON, et al.,
Accused.

CTA CRIM. CASE NOS. O-135 & O-136

Members:

BAUTISTA, *Chairperson,*
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

FEB 26 2018
3:40 p.m.

x- -x

RESOLUTION

FABON-VICTORINO, J.:

Before the Court is the Demurrer to Evidence dated September 11, 2017 filed by accused Enriquito T. Dizon.

Accused Enriquito T. Dizon is indicted for Violation of Section 3602 (Various Fraudulent Practices Against Customs Revenue), in relation to Section 2530, paragraph 1, sub-paragraphs 3, 4, and 5 of the Tariff and Customs Code of the Philippines (TCCP), allegedly committed in Manila during the period November 3, 2005 until December 2, 2005 as indicated in the Amended Information dated June 10, 2009 docketed as CTA Criminal Case No. 0-135.

He is likewise charged with Unlawful Importation or for Violation of Section 3601, in relation to Section 2530, paragraph 1, sub-paragraphs 3, 4, and 5 of the same Code allegedly committed also in Manila on or about February 16, 2006 in stated in the Amended Information dated July 1, 2009, docketed as CTA Criminal Case No. 0-136.

The two cases were later consolidated in the Resolution dated June 24, 2009 and jointly heard.

After presentation of its evidence, the prosecution formally offered all its exhibits which were all denied admission for being mere photocopies and for failure to present their originals for comparison, as reflected in the Resolution dated April 21, 2015.[1]

The prosecution assailed the foregoing Resolution in its Motion for Reconsideration which was denied for lack of merit via the Resolution dated July 9, 2015.[2]

Thereafter, accused who submitted their persons to the jurisdiction of the Court, namely, Teresita M. Arquero, Jose B. Anacan, Gloria Tolentino Agbayani, Joel Bagio, Arlene Mamaed, Harold de Ramos, Wendelyn G. Cabang, Reynaldo T. Dizon, Roberto E. Jose, and Teresita V. Jugado filed their respective demurrers to evidence on separate occasions.

In the Resolution dated February 3, 2016, the Court granted the respective demurrers of named accused, and accordingly acquitted them.

Several months thereafter, or on December 12, 2016, accused Enriquito T. Dizon, who remained at-large throughout the proceedings, appeared and surrendered his person to the Court and posted a cash bond for his provisional liberty.[3]

When arraigned on January 18, 2017, accused Dizon, with the assistance of his counsel, pleaded "Not Guilty" of the crimes charged.[4]

On August 9, 2017, a Pre-Trial Order[5] was to govern the proceedings as against accused Dizon.

---

[1] Docket volume 8, pp. 3757-3758.
[2] Docket volume 9, pp. 3845-3851.
[3] See Order dated December 12, 2016, docket volume 10, p. 4074.
[4] See Minutes of the hearing dated January 18, 2017, docket volume 10, p. 4091; Order dated January 18, 2017, docket volume 10, pp. 4102-4103.
[5] Docket volume 10, pp. 4178-4192.

During its presentation of evidence against accused Dizon, the prosecution manifested that it would just adapt all its evidence previously offered against the other accused, thereafter, the prosecution rested[6] as if unaware that the said evidence were all previously denied admission for being mere machine copies and the originals thereof were not presented for comparison.

In his Demurrer to Evidence, accused Dizon contends that the evidence adduced by the prosecution are insufficient to prove his guilt of the offenses charged beyond reasonable doubt.

As found by the Court in its Resolution dated February 3, 2016, the basis for the accusation for Violation of Section 3602 (Various Fraudulent Practices Against Customs Revenue), in relation to Section 2530, paragraph 1, sub-paragraphs 3, 4, and 5 of the Tariff and Customs Code of the Philippines (TCCP) is the alleged falsification of the Import Entry and Internal Revenue Declarations (IEIRDs) to make it appear that customs duties on the importation were fully paid when in fact they were not.

However, these IEIRDs were denied admission for being mere photocopies and their originals were not presented for comparison. In fine, the Court has no basis to hold that the alleged falsification occurred to avoid payment of the corresponding taxes and duties on the importation. Without such falsification, no unlawful importation occurred, given that the latter charge is premised on the falsification of the IEIRDs.

Assuming that the commission of the offenses charged had been established, still accused Dizon, without any other evidence presented, could not be convicted as the prosecution failed to prove that he had any participation in the commission of the offenses charged.

---

[6] See Minutes of the hearing dated August 23, 2017, docket volume 10, p. 4193; Order dated August 23, 2017, docket volume 10, p. 4196.

Even the machine copies of the IEIRDs do not bear any indication or hint that accused Dizon participated in the commission of the alleged illegal importation. His name or his signature does not appear in the said documents.

The prosecution likewise failed to introduce any document that would show connections/relation of accused Dizon to the alleged shipper and consignee of the contraband or to the named banking institutions.

Neither conspiracy was proved to spur conclusion that would tend to implicate accused Dizon in the commission of the offenses charged.

Not even the alleged spurious BOC Official Receipts, which would tend to show the alleged payments and the deficiencies in the taxes and duties paid were produced by the prosecution during the trial of the cases. They were merely cited by the prosecution witnesses without any evidence in support thereof.

Worse, the machine copies of the purported IEIRDs allowed by the Court to be provisionally marked over the vehement and continuing objections of all the accused were also incredibly lost by the handling counsel.

Not at all astounding, the prosecution did not file any comment or opposition to the demurrer, despite notice.[7]

Under Section 23, Rule 119 of the Revised Rules of Criminal Procedure, as amended, the trial court may dismiss the action on the ground of insufficiency of evidence upon a demurrer to evidence filed by the accused with or without leave of court.[8]

Demurrer to the evidence is "an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether

---

[7] Records Verification Report dated October 30, 2017 issued by the Judicial Records Division of the Court.
[8] People vs. Sandiganbayan, G.R. No. 140633, February 04, 2002

true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or to support a verdict of guilt.[9]

It is settled jurisprudence that in criminal cases the prosecution has the *onus probandi* in establishing the guilt of the accused. *Ei incumbit probatio qui dicit, non que negat*, i.e., he who asserts, not he who denies, must prove."[10] In this case, the prosecution utterly and miserably failed to discharge this burden.

WHEREFORE, the Demurrer To Evidence dated September 11, 2017 filed by accused Enriquito T. Dizon is **GRANTED.** This case filed against him is hereby **DISMISSED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

---

[9] People of the Philippines vs. Jose C. Go, Aida C. Dela Rosa, and Felecitas D. Necomedes, G.R. No. 191015, August 06, 2014.
[10] People vs. Quijano, Sr., G.R. Nos. 144523-26, June 10, 2003