REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**C.T.A. CRIM. CASE NO. O-054** For: Violation of Section 3602, in relation to Sections 2503 and 2530 of the Tariff and Customs Code of the Philippines, as amended.
-versus-	Members: CASTAÑEDA, JR., Chairperson UY, and PALANCA-ENRIQUEZ, JJ.
RANDY DE LEON, ARCELI F. MAGDALENO, MARIE GRACE QUINTO, *Accused.*	**Promulgated:** MAR 30 2009 10:50 a.m.

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DECISION

PALANCA-ENRIQUEZ, J.:

Accused Randy de Leon, Arceli F. Magdaleno and Marie Grace Quinto are charged before this Court with the crime of Violation of *Section 3602,* in relation to *Sections 2503 and 2530 of the Tariff and*

Customs Code of the Philippines, as amended, under an Information, which reads, as follows:

> "That on or about October 14, 2005, in the City of Manila, Philippines, and within the jurisdiction of the Honorable Court, the said accused, Randy C. De Leon, Arceli F. Magdaleno, Marie Grace Quinto, in their capacity as Manager/owner of Intensity General Merchandise (Intensity), general Manager of Total Logistics International Inc. (Total) and Operations Manager of Total, respectively, conspiring and confederating with each other, with intent to defraud the government, did then and there willfully, unlawfully and feloniously cause the submission of Import Entry (IE) No. C82577 supported with a fraudulent Bill of Lading no. MLC0010 and a Commercial Invoice No. 8HS1876 in the filing of an import entries with the Bureau of Customs relative to Intensity's shipment of 8 x 20 container vans with a gross weight of 194,424,00.00 kilograms of tiles valued at US $36,000.00; that far from the truth, the said import entry was supported with fraudulent bill of lading and its supporting documents as 22 x 20 container vans with a gross weight of 510,923.60 kilograms of tiles valued at P5,346,000.00 had arrived at the Port of Manila (POM) on board "M/V Philippine Star" as evidenced by an Inward Foreign Manifest (IFM) and an Electronic Manifest consigned to Intensity General Merchandise (Intensity), owned and managed by accused Randy de Leon; that as such, 14 container vans were released at the Port of Manila without the necessary taxes and duties paid therein in the total amount of One Million Seven Hundred Eight Thousand Nine Hundred Twenty Pesos and Fifty Centavos (P1,778,920.50) to the damage and prejudice of the government.
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> CONTRARY TO LAW." ave

Accused Arceli F. Magdaleno (hereafter "accused Magdaleno") voluntarily surrendered to this Court and posted the required bail bond in the amount of P120,000.00 issued by Industrial Insurance Company, Inc. for her provisional liberty.

As regards accused Randy de Leon and Marie Grace Quinto, considering that as per returns of the warrants of arrest served against both accused, they cannot be located at their respective given addresses of record, Alias Warrants of Arrest were issued against said two accused, who remain at large up to this date.

Upon arraignment, accused Magdaleno entered a plea of "Not Guilty". Trial was conducted, only as regards accused Magdaleno, wherein the parties presented their respective evidence.

Evidence for the prosecution consists of the testimonies of Atty. Nicky Earle Hotillas, Bernardo Evangelista, Louella Quevedo, Atty. Marlon M. Agaceta and Dolores Domingo, and documentary evidence, marked as *Exhibits "A"* to *"P"*, which were admitted by the Court except for *Exhibits "B"* and *"C"* for failure to present the originals for comparison.

On the other hand, evidence for the defense consists of the testimonies of accused Magdaleno, Maiqueline Estalilla, Noel Magdaleno and Gina De Mesa, and documentary evidence, marked as *Exhibits "3"* to *"21"*, which were all admitted by the Court.

Both parties having rested their respective case and upon manifestation of the Public Prosecutor that he will not present rebuttal evidence, the parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice.

The defense filed its "Memorandum" on August 5, 2008, and the case was deemed submitted for decision on August 12, 2008, without the prosecution's Memorandum. On August 21, 2008, the prosecution filed its "Memorandum of Authorities", which was admitted in the Resolution dated August 28, 2008.

Prosecution's Evidence

Atty. Nicky Earle L. Hotillas, the first witness for the prosecution, testified on direct examination that he is the Chief of Law Division of the Port of Manila, Bureau of Customs and one of his duties includes assessment of all requests for amendments of Inward Foreign Manifest submitted to the Port of Manila; that he received a letter from the Run After The Smugglers (RATS) Group inquiring whether or not Intensity General Merchandise applied for an amendment of the Inward Foreign Manifest covering Master Bill of Lading No. PSO608SM102 and House

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Bill of Lading No. MLC0010; that he issued a certification (*Exhibit "H")* stating that after checking the records of their office, it was found that there was no application or request by Intensity General Merchandise for an amendment of the Inward Foreign Manifest covering Master Bill of Lading No. PSO608SM102 and House Bill of Lading No. MLC0010.

On cross examination, Atty. Hotillas testified that he was not the one who personally verified whether there was a request for an amendment of said manifest, but only his staff under his direction, and he issued the certification based on his reliance of the person in-charge of that section.

On re-direct examination, Atty. Hotillas testified that Louella Quevedo, whose signature appears on the certification (*Exhibit "H-2"*), verified the certification and attested that it is a certified true copy.

Bernardo Evangelista, the second witness for the prosecution, on direct examination, identified the following documentary evidence:

1) his Complaint-Affidavit dated December 12, 2005 (*Exhibit "A");*
2) Inward Foreign Manifest (*Exhibit "B"*) ;
3) Import Entry No. C82577-05 (*Exhibit "D"*);
4) Bill of Lading issued by Total Logistics (*Exhibit "E");*
5) Commercial Invoice (*Exhibit "F");* ave

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6) Letter of Mr. Oliver A. Gepiga (*Exhibit "G");*

7) Memorandum of Computation (*Exhibit "I");*

8) Certificate of Incorporation (*Exhibit "J");* and

9) Counter Affidavit of accused Magdaleno (*Exhibit "K");*

and testified that the signatures in the Bill of Lading and Commercial Invoice were assumed to be the signatures of accused Magdaleno; that said assumption was based on the non-appearance of accused Magdaleno during the investigation and upon verification with the SEC online registration, it appears that she is the General Manager/President of Total Logistics; and, that accused Randy de Leon is the proprietor-owner of Intensity General Merchandise, while Wendylyn Cabang is the licensed customs broker, as verified from SEC online registration.

On cross examination, he declared that he was not present when accused Magdaleno allegedly signed the documents, marked as *Exhibits "E"* and *"F";* that he has not yet seen the signature of accused Magdaleno; that he only assumed that accused Magdaleno knows accused Randy de Leon, but he has no personal knowledge; that accused Magdaleno and accused Randy de Leon do not belong to the same company based on his own investigation; that accused Randy de Leon cannot be located; that proof of his notice to accused Magdaleno for

Customs investigation was lost; that the broker is the one who signs the import entry declaration, the forwarder according to his knowledge is the one who notifies the consignee, and is the one being notified by the shipping lines with regard to their shipments, while the consignee is the importer; that the broker in this case is Wendylyn Cabang, the forwarder is accused Magdaleno, and the consignee is Randy de Leon; that based on standard operating procedures, it appears that Wendylyn Cabang, as broker, prepared the document, and it was Total Logistics which presented the falsified Bill of Lading; that the documents relating to the subject transaction were lost by the Assistant Clerk Anacorita Alcantara who received them and executed a Letter of Explanation on the loss of said documents; that based on his investigation, the importer benefited from the decrease in the payment of taxes, while the forwarder benefited from the transaction because it was the one that issued the falsified Bill of Lading; that based on his investigation, he concluded that the document was falsified and passed on to the broker first and then to the clerk; that upon verification with the ATI, through Mr. Oliver Gepiga's Certification, the 22 x 20 containers of ceramic tiles were released to the consignee, Intensity General Merchandise, evidenced by the B/L Import Entry, which was signed by accused Randy de Leon and Wendylyn

Cabang, but accused Magdaleno does not have any signature on said entry.

On re-direct examination, said witness testified that he conducted an investigation and compared the signatures of accused Magdaleno in the Certificate of Incorporation of Total Logistics, Inc., which was acquired from SEC, with the falsified bill of lading, and with the Counter Affidavit of accused Magdaleno, and found that the same are very similar in strokes; that he gained experience in signature comparisons as a Customs Accreditation Secretary Evaluator or Investigator, where he was in charge of verifying the authenticity of the documents submitted to their office and checking if there is any discrepancy; that he is a graduate of BS Criminology where he took Questioned Documents Study as a subject in college where they identified signatures; that upon preliminary investigation with the DOJ, accused Magdaleno and her co-accused appeared and were represented by a certain Atty. Padilla.

On re-cross examination, said witness was made to identify and compare the strokes of the signatures of accused Magdaleno in the General Information Sheet of the Articles of Incorporation and in the falsified bill of lading; he was also made to compare the signatures, entries and logo/stamp mark of *Exhibits "1" and "3"*, and the falsified bill of lading presented by the prosecution; and counsel for the accused was able to elicit from the witness that the signatures in the three documents have certain differences, but the logo is the same.

Louella Quevedo, the third witness for the prosecution, corroborated Atty. Nicky Earle Hotillas' testimony, and testified that she receives and records all documents coming from other divisions, and transmits them to the Chief for assignment; the one assigned will sign on the black book as proof of receipt of the documents; that she does not recall having received any request for amendments involving the shipment consigned to Intensity General Merchandise, covered by Master Bill of Lading PSO608SM102 and House Bill of Lading No. MLC0010; that after receiving a request from the Bureau of Customs inquiring whether or not Intensity General Merchandise has applied for any amendment of the Inward Foreign Manifest, she issued a Certification *(Exhibit "H"),* which was also signed by Atty. Nicky Earle Hotillas.

On cross examination, she declared that she did not receive any copy or did not see any request for amendment; that in her five years of experience with the Bureau of Customs, the broker or the one responsible for the cargo or the lawyer is the one requesting for amendment.

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On re-direct examination, the witness clarified that she did not receive any request involving the subject shipment.

Atty. Marlon M. Agaceta, the fourth witness for the prosecution, testified that he requested for the original copies of the documents in this case from the Law Division of the Port of Manila, evidenced by *Exhibit "L"*, and he was sent an endorsement of the reconstituted copies of the documents *(Exhibit "N")*, such as:

1) Import Entry covering the subject shipment (*Exhibit "B");*
2) Bill of Lading (*Exhibit "E");* and
3) Commercial Invoice No. 8HS1876.

which upon comparison, were admitted by the defense counsel to be faithful reproduction of the originals (reconstituted copies); that the endorsement was signed by Atty. Nicky Earle Hotillas, with the attached Memorandum signed by Atty. Jenny Puno-Diokno and District Collector Horacio P. Suansing, Jr., approving the reconstruction of the mentioned entry; and that it will be utilized as a working copy.

On cross-examination, the witness testified that he has not seen the original documents prior to their reconstitution and does not know how these documents were reconstituted or where they were obtained; that the documents were kept in the Formal Entry Division of the Port of Manila;

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and he obtained the documents from Atty. Nicky Earle Hotillas of the Law Division.

Dolores Domingo, the last witness for the prosecution, on direct examination testified that she is a Customs Operations Officer of the Bureau of Customs, specifically assigned at the Import Assessment Service under the Office of the Commissioner; that she made the computation of the duties, taxes and other charges due on the 22x20 shipment, as per request of the RATS, and arrived at the amount of P2,823,006.71; and identified her Memorandum of Computation (*Exhibit "I"*).

On re-direct examination, the witness declared that the consignee, as stated in the covering entry, is Intensity General Merchandise; that the broker is the one who makes the computation and clearing out of the covering entry, while the forwarder is the one who ship the goods; that the one who benefited from the deficiency in the amount of more than one million is the consignee, which is Intensity General Merchandise.

Defense's Evidence

Noel Magdaleno, the first witness for the defense, on direct examination testified that he was made to identify the signatures on *Exhibits "E"* and *"F"*, which are not the true signatures of his wife; he identified *Exhibits "4"* to *"12",* and *Exhibit "14"* is the photocopy of the freight invoice that was paid by the broker, which they in turn paid to Ben Line, the original of which was with Great Harbor, their client; he also identified *Exhibit "16",* the original Bill of Lading, which was signed by his officemate, Marie Grace Quinto, and *Exhibit "17"*, which is the stamp marker being used by Total Logistics.

On cross examination, the witness declared that on October 17, 2005, he, together with his wife, accused Magdaleno, and Gina de Mesa, went to Dupax and Solano, Nueva Viscaya, for a site inspection and left Manila at about 1:00 o'clock in the morning and returned to Manila late at night of the same day; he was also made to compare the signatures of accused Magdaleno in *Exhibit "E"* and in her judicial affidavit dated February 20, 2006, and concluded that the latter is the genuine signature of his wife.

On re-direct examination, the witness declared that the revisions in the draft of his affidavit were made by his wife, accused Magdaleno.

On re-cross examination, the witness declared that his wife reviewed his affidavit and made the necessary corrections with his permission.

Maiqueline Estalilla, the second witness for the defense, substantially testified that accused Magdaleno was not in the office on October 17, 2005.

Accused Magdaleno, the third witness for the defense, on direct examination, denied that the signatures appearing in *Exhibits "E"* and *"F"* are hers; she also identified the following documents during her testimony:

1) her Complaint Affidavit against Liberty de Ramos, Randy de Leon, and Wendylyn Cabang;
2) the company logo of Total Logistics International, Inc., which was compared with the check vouchers and the alleged falsified Bill of Lading;
3) *Exhibit "14"*, the freight invoice.

The accused further testified that the freight invoice (*Exhibit "14")* was for 22 containers, and they paid P4,280.00 per container, or a total of P95,843.00, as evidenced by a receipt from Ben Line Agencies, Ben Line Shipping Line *(Exhibit "20")*.

On cross examination, the accused declared that she came to know of the incident that out of 22 containers, only 8 were declared by Great Harbor, when she received a subpoena from the DOJ; upon perusal of the

Bill of Lading attached to the complaint, she found that it was not her signature; she was made to identify her counter-affidavit presented before the DOJ (*Exhibit "K"*), the Articles of Incorporation of Total Logistics (*Exhibit "J"*); and her signatures appearing on the checks (*Exhibits "R", "S"* and *"T"*); that she went to Dupax and Solano on October 17, 2005, left Manila at around 4:00 o'clock in the morning, and returned to Manila late in the evening and could not have possibly signed House Bill of Lading No. MLC0010; that she is the General Manager of Total Logistics and signs all House Bill of Ladings whenever she is in the office; that Marie Grace Quinto cannot be located since she was considered AWOL since 2006; that her company paid P350,000.00 to Gallop Forwarders, the company of Liberty de Ramos; that Great Harbor Forwarders is the brokerage of Intensity, also owned by Liberty de Ramos; that Wendylyn Cabang is the licensed broker of Liberty de Ramos; that her company, Total Logistics, renders forwarding services, which handles cargo from port of origin to port of discharge; that if the cargo arrives for importation in Manila they will coordinate with the consignee; that as a forwarding company, they deal with SITC Container Lines Company Limited, the carrier that transports the cargo; that SITC Container Lines issued a Bill of Lading with No. PSO608SM102 dated October 10, 2005; that Total

Logistics did not transact directly with SITC, but with its agent, Ben Line Agencies, Philippines.

On re-direct examination, the accused testified that she was directly transacting with Liberty de Ramos; that the counter-affidavit presented before the DOJ was prepared by Atty. Arman Padilla, who was hired by Liberty de Ramos, and she was not present when the same was prepared; that her defense that the documents are falsified was not utilized by her before the DOJ, as per advice of Atty. Padilla.

On re-cross examination, the accused further clarified that the House Bills of Lading issued by Total Logistics are being used by Customs brokers for processing the release of cargoes.

Gina De Mesa, the fourth witness for the defense, corroborated the testimony of Noel Magdaleno and accused Magdaleno that they all went to Dupax and Solano on October 17, 2005, and left Manila at about 1:00 o'clock in the morning and returned to Manila late in the evening of the same day.

The pertinent law under which accused Magdaleno is charged falls under *Section 3602 of the Tariff and Customs Code of the Philippines, as amended,* which provides:

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> "SEC. 3602. Various Fraudulent Practices Against Customs Revenue.- Any person who makes or attempts to make any entry of imported or exported article by means of any false or fraudulent invoice, declaration, affidavit, letter, paper, or by any means of any false statement, written or verbal, by any means of any false or fraudulent practice whatsoever, or knowingly effects any entry of goods, wares or merchandise, at less than true weight or measures thereof or upon a false classification as to quality or value, or by the payment of less than the amount legally due, or knowingly and willfully files any false or fraudulent entry or claim for the payment of drawback or refund of duties upon exportation of merchandise, or makes or files any affidavit, abstract, record, certificate or other document, with a view to securing the payment to himself or others of any drawback, allowance, or refund of duties on the exportation of merchandise, greater than that legally due thereon, or who shall be guilty of any willful act or omission, shall, for each offense, be punished in accordance with the penalties prescribed in the preceding section."

The above quoted provision enumerates the various fraudulent practices against Customs revenue, to wit: entry of imported or exported articles by means of any false or fraudulent invoice, statement or practice; entry of goods at less than the true weight or measure; or filing of any false or fraudulent entry for the payment of drawback or refund of duties *(Jardeleza vs. People, 481 SCRA 662).*

The term 'entry' in customs law has a triple meaning. It means (1) the documents filed at the Customs house; (2) the submission and acceptance of the documents; and (3) the procedure of passing goods

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through the Customs house *(Rodriguez vs. Court of Appeals, 248 SCRA 288; Jardeleza vs. People, supra).*

Section 3602 contemplates fraudulent practices against Customs revenue. Fraud contemplated by law is one that is intentional with the sole object of avoiding payment of taxes. It must be intentional, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some right *(Transglobe International, Inc. vs. Court of Appeals and Commissioner of Customs, 302 SCRA 57; Remigio vs. Sandiganbayan, 374 SCRA 123).* Fraud envisaged in the law includes the suppression of a material fact which a party is bound in good faith to disclose (*Jardeleza vs. People, supra).*

After a careful study of the evidence on record, the Court finds that the details in Import Entry No.C82577-05 *(Exhibit "D"),* which was submitted to the Bureau of Customs for the computation of taxes and duties, are inconsistent with the details in the Certification issued by Asian Terminals, Inc. *(Exhibit "G")* with respect to the number of containers released from the Port of Manila. Based on the computation made by prosecution witness, Dolores Domingo, there was an underdeclaration of more than 30% between that declared in the Import Entry and that declared in the Inward Foreign Manifest and actually released from the Customs house, which, according to the prosecution, constitutes prima facie evidence of fraud under *Section 2503 of the Tariff and Customs Code*, *as amended*, and is thereby subject to forfeiture under *Section 2530* of the same Code. Further, the prosecution contends that the rightful duties and taxes were not properly paid as payments were made only with respect to eight (8) containers, when in fact twenty-two (22) containers were released from the Customs house. The prosecution further contends that there is a fraudulent scheme, which was used to defraud the government for the payment of the rightful duties and taxes, which is punishable under *Section 3602 of the Tariff and Customs Code, as amended.*

The only question left for the determination of the Court is whether the culpability of accused Magdaleno is sustained by the prosecution's evidence.

The Information charges accused Magdaleno of conspiring with accused Randy de Leon and Marie Grace Quinto in order to evade the payment of correct taxes and duties. The prosecution, therefore, must be able to prove beyond reasonable doubt her clear participation in the execution of the fraudulent scheme. It is well entrenched in our jurisprudence that conspiracy must be shown to exist as clearly and as convincingly as the commission of the offense itself. Absent any act or circumstance from which may be logically inferred the existence of a common design among the accused to commit the crime, the theory of conspiracy remains a speculation not a fact (*People vs. Viernes, 262 SCRA 641; Evangelista vs. People, 315 SCRA 539*).

The prosecution's evidence tends to show that based on the fraudulent bill of lading *(Exhibit "E")*, supported by a commercial invoice *(Exhibit "F")*, which was allegedly prepared and signed by accused Magdaleno as the employee of Total Logistics International, Inc., it was accused Magdaleno who prepared the fraudulent bill of lading, declaring a lower value for the subject shipment and a lesser number of containers, in conspiracy with accused Randy de Leon, since she was the signatory on the said document. The fraudulent bill of lading was the basis of Customs broker, Wendylyn Cabang, in the preparation of the Import Entry declaration, which was presented to the Bureau of Customs for the computation and payment of duties and taxes.

After a careful review and assessment of the evidence on record, the Court finds that the evidence adduced by the prosecution is insufficient to prove the guilt of accused Magdaleno beyond reasonable doubt

The Court finds that the prosecution's accusation is based on mere assumptions. To prove that accused Magdaleno prepared and signed the fraudulent bill of lading, the prosecution presented Bernardo Evangelista, the Customs investigator assigned to this case. He concluded that it was accused Magdaleno who prepared and signed the bill of lading and the commercial invoice based on his comparison of the signatures of the accused in the Articles of Incorporation, in her Counter-Affidavit before the DOJ, and in the falsified bill of lading. However, a careful scrutiny of his direct examination reveals that his findings and recommendations are based purely on assumptions, thusly:

> "ATTY. AGACETA
>
> Q. Mr. Witness, there is a signature shown in this Bill of Lading. Can you please tell this Honorable Court whose signature is that?
>
> MR. EVANGELISTA
>
> A. I assumed that it was signed by Ms. Magdaleno.
>
> ATTY. DELAS ALAS
>
> Objection, your Honors.

It's hypothetical answer. He is only assuming. He has no personal knowledge, your Honors.

JUSTICE CASTAÑEDA

Objection sustained.

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ATTY. AGACETA

Q. What made you say that this is the signature of the accused, Arceli Magdaleno?

MR. EVANGELISTA

A. Sir, during the investigation, ininvite po namin si Ms. Magdaleno. Then, hindi ho nag-appear. Tapos, chineck po namin sa SEC Registration na sya ang General Manager ng Total Logistics. So, connected po sya dyan at yung isa pa, before noong pamilyar kaming na-asaynan ng Total Logistics, so, ina-assumed ko na pirma nya itong nakalista dito.

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ATTY. AGACETA

Q. In your judicial affidavit, you also mentioned of a Commercial Invoice. I will be showing to you a Commercial Invoice. Can you please tell this Court whether this is the Commercial Invoice you are referring to?

MR. EVANGELISTA

A. Yes, sir.

ATTY. DELAS ALAS

Same manifestation, your Honors.

ATTY. AGACETA

Q. Again, there is a signature appearing as agent of Total Logistics. Can you please tell this Honorable Court whose signature is that?

MR. EVANGELISTA

A. I assumed it was Ms. Magdaleno." *(TSN, pp. 14-18, January 7, 2008)*

Further, on cross examination, said witness testified, as follows:

"ATTY. DELAS ALAS

Q. What was your basis if any in claiming that Total Logistics participated therein?

MR. EVANGELISTA

A. Sir, yun nga procedure yung forwarder ang nagnonotify sa broker ng Bill of Lading at saka sa consignee Sir.

ATTY. DELAS ALAS

Q. So, you were basing your investigation result on standard operating procedures?

MR. EVANGELISTA

A. Yes, sir." *(TSN, pp. 14-15, January 21, 2008)*

Also, the Court finds that the investigation conducted in this case is tainted with procedural defects. Witness Evangelista, in an attempt to justify his investigation, claimed that he sent notices to accused Magdaleno for the Customs investigation before filing the case with the DOJ, but accused Magdaleno failed to appear, so he was left with no recourse but to conduct his own assumption and conclusion based on the documents available. However, proof of said notice was not presented before the Court. Thus, there is no evidence that accused Magdaleno was notified and accorded due process during the Customs investigation.

More importantly, to bolster its position, the prosecution emphasized on the similarity of the strokes of the signatures of the accused, based on witness Evangelista's investigation. However, record shows that the prosecution did not present a handwriting expert to controvert the defense of denial and forgery, which could have strengthen its allegation that the questioned signatures are the genuine signatures of accused Magdaleno. The Customs investigator's experience, as Customs Accreditation Secretary Evaluator or Investigator, and his one subject taken up in college, are not sufficient to convince this Court that he has an expertise on signature comparison. Even so, in analyzing the signatures, Mr. Evangelista compared the signature of accused Magdaleno in the bill of lading with her signature in the Articles of Incorporation of Total Logistics through SEC online registration, which is only a computer print out from the scanned copy of the original documents. Having taken up a Questioned Documents course, the witness knows that to be able to have an accurate signature comparison, he must have the original copies of the documents. And even if the original of the questioned bill of lading that was submitted to the Bureau of Customs was allegedly lost, he should have compared the reconstituted copy with other original documents. Additionally, he was not able to describe the procedure conducted by him in comparing the signatures.

Nevertheless, since the Court is not bound by opinions of handwriting experts, resort to these experts is not mandatory or indispensable to the examination or the comparison of handwriting. A finding of forgery does not depend entirely on the testimonies of handwriting experts, because the judge must conduct an independent examination of the questioned signature in order to arrive at a reasonable conclusion as to its authenticity. No less than *Section 22, Rule 132 of the Revised Rules on Evidence* explicitly authorizes the court, by itself, to make a comparison of the disputed handwriting "with writings admitted or treated as genuine by the party against whom the evidence is offered or proved to be genuine to the satisfaction of the judge." Indeed, the authenticity of signatures is not a highly technical issue in the same sense that questions concerning, *e.g.*, quantum physics or topology, or molecular biology, would constitute matters of a highly technical nature. The opinion of a handwriting expert on the genuineness of a questioned signature is certainly much less compelling upon a judge than an opinion rendered by a specialist on a highly technical issue *(G & M Philippines, Inc. vs. Cabot, 507 SCRA 552)*. Hence, the Court is bound to conduct its own examination of the assailed signatures.

Since the original of the assailed bill of lading was admittedly lost in the custody of Customs employees, the Court has no recourse but to utilize the reconstituted copies of the same. Based on the Court's own examination of the signatures, contrary to the findings of prosecution witness Bernardo Evangelista, the Court finds that there is a glaring disparity on the strokes of the signature on the reconstituted copy of the bill of lading *(Exhibit "E"),* as compared with the signatures on the different documents presented by the accused with her admitted genuine signature. The Court compared the purported signature of accused Magdaleno in the reconstituted bill of lading with her signatures in the following documents:

1) Accused's Counter-Affidavit before the DOJ *(Exhibit "K-1");*
2) Articles of Incorporation of Total Logistics International, Inc. *(Exhibit "J-1");*
3) Accused's Complaint-Affidavit before the Prosecutor's Office of Manila *(Exhibit "4");*
4) Checks issued by Total Logistics International, Inc., bearing the signatures of the accused *(Exhibits "6" and "8");* and
5) Sworn Questions and Answers of accused Magdaleno *(Exhibit "19-A").*

The Court also examined and compared the signatures of accused Magdaleno appearing in the docket of this case, which were affixed by accused Magdaleno either in open Court or in the presence of the Clerk of Court, such as:

1) accused's Undertaking in her bail bond; and

2) various minutes of hearings of the trial of this case.

A mere layman will immediately notice that the signatures in the reconstituted bill of lading *(Exhibit "E")*, particularly the strokes of letter M, the loops of letters G, D and L, as well as the last loop at the end of the signatures, are visibly different, as compared with the other documents. The Court finds that the three signatures in the bill of lading *(Exhibit "E")* vary with the other signatures of accused Magdaleno appearing in the documents examined by the Court. These variations and differences, that are evidently visible with a naked eye, give reasonable doubt on the genuineness of the signatures, which was not controverted by the prosecution. Furthermore, the fact of existence of two bills of lading, one signed by accused Mary Grace Quinto, and another one purportedly signed by accused Magdaleno, raises an issue as to the due execution of both documents, which in this case was never explained by the prosecution.

At most, the prosecution was only able to prove that:

1) accused Magdaleno's company, Total Logistics International, Inc., as a forwarder, was the one that handled the shipment

until the issuance of a Bill of Lading for the consignee, Intensity General Merchandise;

2) that there was no request for amendment of the Inward Foreign Manifest *(Exhibit "H");*

3) that based on the Import Entry Declaration submitted to the Bureau of Customs, there was an assessment for only 8 containers of ceramic tiles amounting to P1,016,696.00 *(Exhibit "D");*

4) that there was payment with regard to the 8 containers of ceramic tiles;

5) that 22 containers were released from Asian Terminals, Inc. on October 15 and 17, 2005 to Intensity General Merchandise, as the consignee *(Exhibit "G");*

6) that based on the computation of witness, Dolores Domingo, a Customs Operations Officer assigned at the Import Assessment Service, the total Customs duties for the 22 containers should be P2,826,006.715; and

7) that the documents pertaining to this case were lost while in Customs custody.

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Clearly, there is nothing from the evidence adduced by the prosecution to show that accused Magdaleno committed the fraudulent practices prohibited by *Section 3602 of the Tariff and Customs Code, as amended.*

For her part, accused Magdaleno raised the defense of alibi and forgery of her signature.

While accused Magdaleno's defense of alibi is indeed weak, being corroborated only by her husband and a friend, and it was not shown that it was impossible for her to have signed the bill of lading in Manila, nor was it shown that she might have antedated the bill of lading, it is a well-settled principle in criminal law that every conviction must be based not on the weakness of the defense, but on the strength of the prosecution. While the theory of the defense is weak and is not totally convincing, the Court cannot tip the scales of justice against the accused in the face of the well-entrenched rule that the burden of proving the offense charged rests on the prosecution. The accused does not have to prove his innocence for that is presumed *(People vs. Viray, 202 SCRA 331; Raul Basilio D. Boac, et al. vs. People of the Philippines, G.R. No. 180597, November 7, 2008*).

For all the foregoing, the Court finds that there is no evidence, testimonial or otherwise, that identifies accused Magdaleno as one of the perpetrators of the crime charged. The Court hereby concludes that the evidence for the prosecution falls short of the legal yardstick relative to the conviction of accused Magdaleno beyond reasonable doubt.

It is an unbending principle in this jurisdiction that in every criminal prosecution, the accused must always be presumed innocent until the contrary is proved *(People vs. dela Cruz, 200 SCRA 395)*. Having fallen short of that quantum necessary to establish the accused's guilt, the prosecution's case must fall. Only if the Court could arrive at a conclusion that the crime had been committed precisely by the person on trial under the exacting test of proof beyond reasonable doubt, should the sentence be one of conviction. Every circumstance favoring their innocence must be duly taken into account. The proof against the accused must survive the test of reason. The conscience must be satisfied that on the accused could be laid the responsibility for the offense charged. Moral certainty is a must *(People vs. Ramos, 162 SCRA 804; People vs. dela Cruz, supra; People vs. Cruz, 231 SCRA 771; People vs. Ganguso, 250 SCRA 268, 274-275; Raul Basilio D. Boac, et al. vs. People of the Philippines, supra)*.

WHEREFORE, for insufficiency of evidence, accused **ARCELI F. MAGDALENO** is hereby **ACQUITTED** of the crime charged.

As regards accused Randy de Leon and Mary Grace Quinto, it appearing from the records that the warrants of arrest issued against said accused had been returned unserved, and in order that this case may not remain pending for an indefinite period of time, the same is hereby **ARCHIVED**, without prejudice to its revival immediately upon the apprehension of said accused.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice
Chairperson, Second Division