REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

MARIVIC BRIONES,
DAVID BANGA
BENJAMIN VALIC,
Accused.

CTA CRIM. CASE NO. O-158

For: *Violation of Section 3602 of the Tariff and Customs Code of the Philippines in relation to Article 172 of the Revised Penal Code*

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:
JUL 23 2012
9:30 a.m.

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DECISION

CASTAÑEDA, JR., *J.:*

This decision pertains to accused Benjamin Valic only.

STATEMENT OF FACTS

In the Information filed against Benjamin Valic on November 20, 2009, accused Valic was charged for violation of Section 3602 of the Tariff and Customs Code of the Philippines, in relation to Article 172 of the Revised Penal Code. The said Information is hereunder quoted:

"The undersigned State Prosecutor of the Department of Justice, hereby accuses Marivic Briones and David Banga, general manager and customs representatives, respectively of Skyrider Brokerage (Skyrider), and Benjamin Valic of BP Valic Brokerage, of violation of Section 3602 of the Tariff and Customs Code of the Philippines, as amended, in relation to Article 172 of the Revised Penal Code, committed as follows:

'That on or about June 25, 2001, at the Port of San Fernando, La Union, and within the jurisdiction of this Honorable Court, the above-named accused Marivic Briones and David Banga, being the general manager and customs representatives, respectively of Skyrider, in conspiracy with Benjamin Valic of BP Valic Brokerage, did then and there, willfully, unlawfully and feloniously filed before the Bureau of Customs of the aforesaid port, Import Entry No. 95-2001 covering 9,667 prilled urea in bulk with the equivalent duty in the amount of P1,829,496.00, by means of fraudulent statement or declaration making it appear that the subject shipment is exempt from payment of duties and taxes on the basis of fraudulent certificate of eligibility purportedly issued by the Philippine Carabao Center in favor of Norsk Hydro Philippines, to avoid payment of rightful duties and taxes.'

CONTRARY TO LAW."

On March 22, 2010[1], this Court issued a Warrant of Arrest against accused Benjamin Valic.

Accused Valic voluntarily surrendered before this Court and posted the required bail bond for his provisional liberty by way of surety bond in the amount of P120,000.00 on July 12, 2010.[2]

Upon arraignment, the accused, assisted by his counsel *de parte*, Atty. Wilfredo Garcia, admitted that he is the same person charged in the

[1] Docket, p. 177.
[2] Docket, p. 234.

Information in the above-captioned case and entered a plea of "Not Guilty" to the crime charged.[3]

On August 12, 2010, the preliminary conference was set. However, accused Valic and his counsel failed to appear on the said date. Thus, the preliminary conference was reset to September 2, 2010.[4]

After the preliminary conference[5], the parties filed a Joint Manifestation and Motion for Provisional Dismissal on September 30, 2010.[6] Meanwhile, the Pre-Trial Order (As Regards Accused Marivic Briones and Benjamin Valic Only)[7] was issued on October 19, 2010. Thereafter, the parties' Joint Manifestation and Motion for Provisional Dismissal was submitted for resolution on November 11, 2010.[8] The said Joint Manifestation and Motion was later denied on January 6, 2011.[9]

Trial proceeded, wherein the prosecution presented both testimonial and documentary evidence. During the hearing held on August 24, 2011, the testimonies of Atty. Rey Roland Bergado and Mr. Manuel Rico in Criminal Case No. 0-157 were adopted in the present case, considering that the prosecution has the same witnesses to testify on almost the same allegations and that Criminal Case Nos. 0-157 and 0-158 refer to the same shipment. The only difference is that in this case the subject of the Information is Import Entry

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[3] Minutes of August 2, 2010 Hearing, Docket, p. 268; Resolution dated August 4, 2010, Docket, p. 276.
[4] Minutes of August 25, 2010 Hearing, Docket, p. 278.
[5] Minutes of Preliminary Conference as Regards Accused Benjamin Valic Only, Docket, pp. 279-283.
[6] Docket, pp. 318-319.
[7] Docket, pp. 323-332.
[8] Docket, p. 335.
[9] Docket, pp. 344-346.

No. C-95-2001.[10] The prosecution likewise presented Ms. Cecille C. Abo as witness.[11]

Based on the Affidavit of Complaint executed by Atty. Rey Roland Bergado, Legal Officer II and presently assigned as Investigator at the Internal Inquiry and Prosecution Division-Customs Intelligence and Investigation Service, it was mentioned that he was the one tasked to investigate the case entitled: Spurious Certificate of Eligibility of Three Importers of Fertilizers namely, Norsk Hydro (Philippines), Inc. ("Norsk Hydro" for brevity), Fully Filipino Enterprises, Inc. and Philippine Planters Consumers, Inc. In the course of his investigation, it was allegedly discovered that Norsk Hydro filed before the Bureau of Customs-Port of San Fernando, La Union the Import Entry No. C-95-2001, among others. According to Atty. Bergado, no duties were assessed against the said shipment of Norsk Hydro on the basis of a misrepresentation that the same is subject to zero percent (0%) tariff as provided under Executive Order No. 133. It supposedly turned out that all along, Norsk Hydro was remitting to its customs broker, Skyrider Customs Brokerage, represented by its president, Ms. Marivic Briones, one of the respondents herein the rightful amount of duties and taxes corresponding to the above shipments of the company. However, instead of paying the said amount to the Bureau of Customs, respondent Marivic Briones, with Mr. David Banga of Jesurito Pareja Brokerage and Mr. Benjamin P. Valic of BP Valic Customs Brokerage, her co-respondents herein, conspiring and confederating

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[10] Transcript of Stenographic Notes (TSN) dated August 24, 2011, pp. 4-9.
[11] Minutes of October 19, 2011 Hearing, Docket, p. 399.

with one another to defraud the government and without authority from Norsk Hydro filed before the Bureau of Customs-Port of San Fernando, La Union a Certificate of Eligibility purportedly issued by the Philippine Carabao Center in favor of Norsk Hydro showing that all the shipments of the company are exempted from payment of duties and taxes.[12]

Atty. Bergado likewise averred that the Certificate of Eligibility filed by accused Briones, Banga and Valic for the subject shipment is spurious in the light of the certification of Director Felix Mamuad of the Philippine Carabao Center that his office did not issue the said certificate inasmuch as said office was not authorized to do so under Executive Order No. 133.[13]

In the Affidavit[14] executed by Mr. Manuel A. Rico, presently holding the position of Customs Operation Officer III, Port of San Fernando, La Union, it was stated that Mr. Rico actually examined the shipments consigned to Norsk Hydro, including the shipment as represented by Import Entry No. C-95-2001[15]. It was further mentioned that the said shipment consisted of fertilizers based on the actual examination made by Mr. Rico. After conducting the actual examination, Mr. Rico allegedly indicated therein that the same was exempted under Executive Order No. 133 dated July 31, 1999. Upon completion, he forwarded the subject Import Entry to the Principal Appraiser, Mr. Ruperto Fabic, for final assessment of the shipment.

Likewise, the prosecution's witness, Ms. Cecille C. Abo, the Human Resources Management Officer of Philippine Carabao Center, testified that the

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[12] Exhibit "A".
[13] *Ibid.*
[14] Exhibit "L".
[15] Import Entry No. 95-01 in the Affidavit.

Certification purportedly issued by a certain Bienvenido N. Torralba, OIC-Director of the Philippine Carabao Center, is a falsified document. Ms. Abo observed that the logo appearing in the said Certification is different from their actual logo and that their Executive Director is not Bienvenido N. Torralba but Dr. Libertado C. Cruz.[16]

The prosecution also formally offered its documentary evidence marked as Exhibits "A" (described as the Affidavit of Atty. Rey Roland F. Bergado dated July 27, 2004), "E" (described as Certificate of Eligibility dated August 22, 2001), "E" and "E-1" (described as Certification dated September 22, 2011 and the signature of Ms. Cecille C. Abo, respectively) and "L" (described as the Affidavit of Manuel A. Rico dated February 13, 2003); which were admitted by this Court as evidence for the prosecution, with the exception of Exhibit "E", for failure of the prosecution to present the original, and Exhibits "E" and "E-1", for not being found in the records of the case.[17]

On November 8, 2011, then accused Marivic J. Briones filed her Demurrer to Evidence[18], without any comment or opposition from the prosecution. In a Resolution[19] dated January 9, 2012, this Court, considering the prosecution's evidence as insufficient to establish the guilt of accused Briones, granted the Demurrer to Evidence and dismissed the Information, but only as to the accused Marivic J. Briones.

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[16] TSN dated October 19, 2011, pp. 9-11.
[17] Resolution dated November 18, 2011, Docket, pp. 424-426.
[18] Docket, pp. 409-413.
[19] Resolution dated January 9, 2012, Docket, pp. 430-439.

In the case of accused David Banga, a Warrant of Arrest[20] was issued on March 22, 2010 for his arrest. However, a Return of Warrant of Arrest[21] was executed on March 4, 2012, stating that the warrant was unserved as accused Banga could not be found at his given address despite diligent efforts. An Alias Warrant of Arrest[22] was then issued by the Court on March 22, 2012. The same was subsequently returned unserved for the reason that the said person cannot be located at the given address.[23]

On the other hand, during the hearing set for the initial presentation of evidence for accused Benjamin Valic, counsel for accused Valic manifested that he will file a Motion for Leave of Court to file Demurrer to Evidence.[24] Thereafter, accused Valic filed his Motion for Leave of Court to File and Admit Demurrer to Evidence on February 3, 2012.[25] In the Resolution dated February 15, 2012, this Court denied the said Motion for being filed out of time.[26]

On February 29, 2012, the case was again called for the initial presentation of evidence for accused Valic.[27] During the said hearing, accused Valic manifested that he is waiving his right to present evidence and that he will be submitting the instant case for decision. On April 11, 2012, accused Valic filed a Motion to Submit Case for Decision with Respect to

[20] Docket, p. 463.
[21] Docket, p. 462.
[22] Docket, p. 466.
[23] Docket, pp. 477-479.
[24] TSN dated January 30, 2012, p. 3; Minutes of January 30, 2012 Hearing, Docket, p. 447.
[25] Docket, pp. 453-454.
[26] Docket, pp. 456-457.
[27] Minutes of February 29, 2012 Hearing, Docket, p. 458; Docket, p. 460.

Accused Benjamin Valic[28] based on insufficiency of prosecution's evidence as per records of this case. The said Motion was granted in a Resolution dated April 20, 2012. Accordingly, the case against accused Benjamin Valic was considered submitted for Decision.[29]

ISSUE

WHETHER OR NOT ACCUSED VALIC IS GUILTY AS CHARGED FOR VIOLATION OF SECTION 3602 OF THE TARIFF AND CUSTOMS CODE OF THE PHILIPPINES IN RELATION TO ARTICLE 172 OF THE REVISED PENAL CODE.

THIS COURT'S RULING

The offense allegedly committed by accused Valic is the violation of Section 3602 of the Tariff and Customs Code of the Philippines, in relation to Article 172 of the Revised Penal Code, the pertinent portions of which are quoted as follows:

> "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, or 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**

[28] Docket, pp. 471-473.
[29] Docket, p. 476.

> **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.**" *(Emphasis supplied)*
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> "Art. 172. *Falsification by private individuals and use of falsified documents.* - The penalty of *prision correccional* in its medium and maximum periods and a fine of not more than P5,000 pesos shall be imposed upon:
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> 1. Any private individual who shall commit any of the falsifications enumerated in the next preceding article in any public or official document or letter of exchange or any other kind of commercial document; and
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> 2. Any person who, to the damage of a third party, or with the intent to cause such damage, shall in any private document commit any of the acts of falsification enumerated in the next preceding article.
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> Xxx xxx xxx."

Based on the Information, it was alleged that accused Valic violated the afore-mentioned provisions of law via his conspiracy with Marivic Briones and David Banga in willfully, unlawfully and feloniously filing before the Bureau of Customs-Port of San Fernando, La Union Import Entry No. C-95-2001, covering 9,667 prilled urea in bulk with the equivalent duty in the amount of P1,829,496.00 by means of fraudulent statement or declaration, making it appear that the subject shipment is exempt from payment of duties and taxes on the basis of a fraudulent Certificate of Eligibility purportedly issued by the Philippine Carabao Center in favor of Norsk Hydro, to avoid payment of rightful duties and taxes.

Relevantly, it must be borne in mind that an accused has in his favor the presumption of innocence which the Bill of Rights guarantees. Unless his guilt is shown beyond reasonable doubt, he must be acquitted. This reasonable doubt standard is demanded by the due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged. The burden of proof is on the prosecution, and unless it discharges that burden, the accused need not even offer evidence in his behalf, and he would be entitled to an acquittal. Proof beyond reasonable doubt does not, of course, mean such degree of proof as, excluding the possibility of error, produce absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. The conscience must be satisfied that the accused is responsible for the offense charged.[30]

Thus, the prosecution has the *onus probandi* to show beyond reasonable doubt that:

1. There was an imported article, which, according to the Information, is the 9,667 prilled urea in bulk with the equivalent duty in the amount of P1,829,496.00 represented by Import Entry No. C-95-2001;

2. The accused Valic, in conspiracy with the other accused, made or attempted to make an entry of the alleged imported article through the filing of the said Import Entry No. C-95-2001 at the Bureau of Customs-Port of San Fernando, La Union on June 25, 2001; gr

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[30] *Boac, et al. vs. People of the Philippines*, G.R. No. 180597, November 7, 2008, 570 SCRA 533 citing *People vs. Ganguso*, G.R. No 115430, November 23, 1995, 250 SCRA 268, 274-275.

3. The same was done by means of any false or fraudulent declaration or by means of any false statement, which is the Certificate of Eligibility purportedly issued by the Philippine Carabao Center in favor of Norsk Hydro, making it appear that the subject shipment is exempt from payment of duties and taxes;

4. The Certificate of Eligibility was falsified in violation of Article 172 of the Revised Penal Code; and

5. The Certificate of Eligibility was filed by accused Valic to defraud the government by avoiding payment of rightful duties and taxes.

After careful study and consideration of all the foregoing pieces of evidence presented by the prosecution against accused Valic, the Court finds the same grossly insufficient to support a finding of guilt.

First, it must be noted that there was an allegation of conspiracy attendant to the commission of the offense charged.

There is conspiracy "when two or more persons come to an agreement concerning the commission of a felony and decide to commit it." Conspiracy is not presumed. Like the physical acts constituting the crime itself, the elements of conspiracy must be proven beyond reasonable doubt. While conspiracy need not be established by direct evidence, for it may be inferred from the conduct of the accused before, during and after the commission of the crime, all taken together, however, the evidence must be strong enough to show the community of criminal design. For conspiracy to exist, it is essential that there must be a conscious design to commit an offense. Conspiracy is the product of intentionality on the part of the cohorts.[31]

[31] *Violeta Bahilidad vs. People of the Philippines*, G.R. No. 185195, March 17, 2010, 615 SCRA 597.

It is also essential for one to be a party to a conspiracy as to be liable for the acts of the others that there be intentional participation in the transaction with a view to the furtherance of the common design. Except when he is the mastermind in a conspiracy, it is necessary that a conspirator should have performed some overt act as a direct or indirect contribution in the execution of the crime planned to be committed. The overt act may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his co-conspirators by being present at the commission of the crime or by exerting moral ascendancy over the other co-conspirators.[32]

A perusal of the evidence presented by the prosecution would show that it failed to prove that accused Valic acted in conspiracy with the rest of the accused in the commission of the offense charged.

In this case, the prosecution's evidence failed to present direct evidence to establish that there was indeed a conscious criminal design existing between and among the accused to commit the offense charged. Neither did the prosecution present evidence on the conduct of accused Valic before, during and after the commission of the offense which would indicate community of criminal design. As correctly pointed out by accused Valic, no proof of conspiracy between him and the rest of the accused was offered in evidence by the prosecution in terms of personal relation, employment and business relation.

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[32] *Pecho vs. People of the Philippines, et al.,* G.R. No. 111399, September 27, 1996, 262 SCRA 518.

The prosecution also failed to prove the existence of Import Entry No. C-95-2001 that was allegedly filed at the Bureau of Customs-Port of San Fernando, La Union on June 25, 2001, as no Import Entry or copy thereof was offered in evidence. Absent the said Import Entry, necessarily, the prosecution also failed to prove that there was an item or article imported in the amount stated in the Information.

It was similarly observed that while there was an allegation that there was a fraudulent Certificate of Eligibility purportedly issued by the Philippine Carabao Center in favor of Norsk Hydro utilized by accused Valic to avoid payment of rightful duties and taxes in violation of Article 172 of the Revised Penal Code, the original of the said falsified Certificate was not presented before this Court. In this regard, the Court found instructive the case of *Borje vs. Sandiganbayan, et al.*[33], wherein the Supreme Court explained as follows:

> "**In a criminal case for the falsification of a document, it is indispensable that the judges and the courts have before them the document alleged to have been simulated, counterfeited or falsified,** in order that they may find, pursuant to the evidence produced at the trial, whether or not the crime of falsification was actually committed; **in the absence of the original document, it is improper to conclude, with only a copy of the said original in view, that there has been a falsification of a document which was neither found nor exhibited, because, in such a case, even the existence of such original document may be doubted**." *(Emphasis supplied)*

Considering that the document alleged to have been falsified, *viz.,* the Certificate of Eligibility, was not presented before this Court; and considering

[33] G.R. No. L-55436, November 25, 1983, 125 SCRA 763, citing *U.S. vs. Gregorio,* 17 Phil. 522.

further that the exhibit described and offered by the prosecution as Certificate of Eligibility was denied admission in the Resolution dated November 18, 2011, a determination of whether such Certificate mentioned in the Information was indeed falsified would be impossible.

Even assuming that the prosecution was able to prove the existence of the falsified Certificate of Eligibility allegedly utilized in perpetrating the offense charged, still there was nothing in the evidence presented by the prosecution that would show that accused Valic was the one who filed the said Import Entry Declaration No. C-95-2001 and presented the Certificate of Eligibility before the Bureau of Customs. In addition, no evidence was presented by the prosecution to prove that accused Valic is the customs broker hired by Norsk Hydro to facilitate the release of the subject shipment as represented by Import Entry No. C-95-2001. Other than the allegation in the Affidavit of Complaint executed by the prosecution's witness, Atty. Bergado, that accused Valic conspired with the rest of the accused in the filing of Import Entry No. C-95-2001 and used the Certificate of Eligibility to avoid payment of taxes and duties[34], there was no direct evidence presented by the prosecution which would indicate the actual participation of accused Valic in the commission of the offense charged. *Ergo*, the prosecution failed to establish the direct or indirect contribution of accused Valic in the commission of the offense charged in the Information.

Well-entrenched in jurisprudence is the rule that the conviction of the accused must rest, not on the weakness of the defense, but on the strength

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[34] Exhibit "A".

of the prosecution. The burden is on the prosecution to prove guilt beyond reasonable doubt, not on the accused to prove his innocence.[35]

In this case, it is apparent that there is no competent or sufficient evidence of particular overt acts which would show accused Valic's participation in the commission of the offense charged in the Information. There is clearly a reasonable doubt as to accused Valic's guilt. And since his constitutional right to be presumed innocent until proven guilty can be overthrown only by proof beyond reasonable doubt, the accused must then be acquitted even though his innocence may be doubted.[36] It is noteworthy to mention that even the offense charged in the Information was not proven. All of the foregoing observations lead this Court to the conclusion that the prosecution's evidence against accused Valic is grossly insufficient to sustain a guilty verdict.

Finally, pursuant to Section 7(b) of RA 1125, as amended by RA 9282, the civil action is simultaneously filed with the criminal action. In effect, evidence should be allowed in the criminal proceedings to establish the civil liability arising from the offense committed.[37] In this case, however, no evidence was presented to prove the civil liability which may arise from the offense charged.

WHEREFORE, premises considered, accused Benjamin Valic is hereby **ACQUITTED** of the crime charged for failure of the prosecution to establish the guilt of the accused beyond reasonable doubt and without civil liability.

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[35] *Supra*, Note 30, *Boac, et al. vs. People of the Philippines.*
[36] *Supra,* Note 32.
[37] *Chua vs. Court of Appeals, et al.*, G.R. No. 150793, November 19, 2004, 443 SCRA 259.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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.

ERNESTO D. ACOSTA
Presiding Justice