REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

CHRISTOPHER V. FERMIN,
GERARDO V. IGNACIO,
DIONE NAVARRO,
DANIEL A. SAPORNA,
LAURENCE G. SISON,
MARIO P. GUZMAN,
RUEL MAGAWAY,
GILBERT P. VERGARA,
NEL S. LEE,
RAYMOND MIRANDA,
ALBERT E. GATDULA,
MYLA T. DAWAL,
ALLAN F. CANEJA, and
BENITO S. DESTREZA,
Accused.

CTA CRIM CASE NO. O-093

For: Violation of Section 3602 of the TCCP in relation to Art. 172 of the RPC

Members:

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

Promulgated:
JAN 2 4 2018
3:48 p.m.

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RESOLUTION

For resolution by the Court are the Demurrers to Evidence filed by the following accused:

1) Myla T. Dawal on July 20, 2017; and

2) Daniel A. Saporna on October 03, 2017 *via* registered mail.

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Both accused were one of many charged for violation Section 3602 of the Tariff and Customs Code of the Philippines ("TCCP"):

> "***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 the 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 offence, be punished in accordance with the penalties prescribed in the preceding section."

in relation to Article 172 of the Revised Penal Code:

> "***Art. 172.*** *Falsification by private individual 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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> Any person who shall knowingly introduce in evidence in any judicial proceeding or to the damage of another or who, with the intent to cause such damage, shall use any of the false documents embraced in the next preceding article, or in any of the foregoing subdivisions of this article, shall be punished by the penalty next lower in degree."

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The accusatory portion of the Amended Information dated September 08, 2008, reads as follows:

> "That on or about the period between 04 to 27 January 2006, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, in conspiracy with each other, did then and there willfully, unlawfully and feloniously commit acts constituting fraudulent practice against Customs Revenue, by then and there causing to be imported a shipment of fifteen (15) container vans said to contain Plastic Resins by means of false PEZA Import Permits making it appear that the same are consigned to ZPI Philippines, Inc., Mitsuwa Phils., Inc. and ASABA Manufacturing Phils., Inc. when in truth and in fact, they are not the consignees/owners of the said shipment, and causing the same to be released from PEZA premises without the necessary taxes and duties paid therein in the total amount of FOUR MILLION ONE HUNDRED EIGHTY THREE THOUSAND SEVEN HUNDRED THIRTY TWO PESOS (Php 4,183,732.00) more or less, to the damage and prejudice of the Philippine Government."[1]

To prove the accusations against the accused, the prosecution presented as witnesses Nemesio C. Magno Jr., Atty. Jose O. Lagac, Jr., and Fernando H. Penus.

Special Investigator III of the Customs and Intelligence and Investigation Service ("CIIS") of the Bureau of Customs ("BOC") since 1981, **Nemesio C. Magno Jr.**,[2] testified that he was a member of the Investigation and Prosecution Division of the CIIS, who collaborated with Atty. Jose O. Lagac, Jr. in the investigation of the subject fraudulent act committed against the BOC.

It appeared from their investigation that on January 2006, fifteen (15) container vans containing plastic resins, all consigned to Ocean Navigator Express Logistics Inc. ("ONE Logistics"), arrived in Manila International Container Port ("MICP"). As the ultimate consignees of the shipment were allegedly Philippine Economic Zone Authority ("PEZA") registered companies/locators, import permits were first secured from PEZA in order to release the shipments.

KSN Air & Sea Freight Co., Inc. ("KSN"), as broker, represented the consignees to effect the release of the cargo from the BOC. KSN presented the import permits and applied for transshipment permits in order to effect the transfer of the shipment from the pier to the alleged consignees' warehouse in Cavite.

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1 Docket, pp. 453-454.

2 *See* Minutes of hearing dated September 14, 2016, docket, p. 1058; Transcript of Stenographic Notes taken during the Hearing on September 14, 2016, docket, pp.1059-1120; Complaint-Affidavit of Atty. Jose O. Lagac, Exhibit "P-2" and "P-2-a", docket, pp. 1364-1375.

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Further investigation showed that the imports permits presented turned out to be spurious. The import permits allegedly issued to Mitsuwa Phils., Inc. ("Mitsuwa"), ASABA Manufacturing Phils., Inc. ("Asaba") and ZPI Phils., Inc. ("ZPI") were actually issued to Nep Logistics, Inc., Philfine Electron Inc., American Power Conversion and Furuhashi Knit Glove Phils. Inc. In fact, the responsible officers of Mitsuwa, Asaba and ZPI disclaimed ownership over the shipment.

He further claimed that officers of KSN conspired with ONE Logistics for utilizing import permits and falsified house bills of lading in the application for transshipment permits for the unlawful release of the subject resin under investigation.

Lastly, the witness admitted that the name of accused Myla T. Dawal did not appear in the Recommendation Report he and Atty. Jose O. Lagac, Jr. submitted to their Chief for review and approval (*i.e.,* not one of the persons recommended to be charged), nor was she included in their investigation. Her name did not appear in any of the documents he identified. The same is true with accused Daniel A. Saporna.

Witness **Atty. Jose O. Lagac, Jr.,**[3] Attorney II in the BOC, confirmed that he was the co-investigator of Nemesio C. Magno, Jr. in the alleged technical smuggling by KSN. Upon certification by PEZA, they were able to discover that the documents which were used to secure the release of the goods from BOC were for other shipments for other companies. He also corroborated the testimony of Nemesio C. Magno, Jr. in that the ultimate consignees on record, namely, Mitsuwa, Asaba and ZPI, denied the ownership of said shipment.

He further admitted that both accused Myla T. Dawal and Daniel A. Saporna were not among those persons he had investigated or those persons recommended to be charged. However, as per memorandum of the Director of "Run After the Smugglers (RATS)" program of the BOC, both accused Myla T. Dawal and Daniel A. Saporna as responsible officers of KSN under the Corporation Code, were included in his Complaint-Affidavit dated April 20, 2006 filed with the Department of Justice.

During his testimony, **Fernando H. Penus,**[4] presently working as Enterprise Services Officer 4 at Gateway Business Park, Special Economic Zone (Cavite), declared that on January 25, 2006, the CIIS of BOC coordinated with him with regard to the subject investigation. He verified the import permits used in the release of the subject resin shipments and discovered that they were forged. He found that the IP Control numbers appearing on the said forged import permits pertain to other

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[3] *See* Minutes of hearing dated October 12, 2016, docket, p. 1128; Transcript of Stenographic Notes taken during the Hearing on October 12, 2016, docket, pp.1131-1182; Complaint-Affidavit of Atty. Jose O. Lagac, Exhibit "P-2" and "P-2-a", docket, pp. 1364-1375.

[4] *See* Minutes of hearing dated December 07, 2016, docket, p. 1205; Transcript of Stenographic Notes taken during the Hearing on December 07, 2016, docket, pp.1218-1294.

import permits ("real import permits"). Moreover, these real import permits indicate an IP Form Serial No. and importer different from that indicated in the forged import permits. Additionally, in the forged import permits, there were no stamp cleared from the Fire Industrial Safety Division ("FISD") and signature of Engr. Jasmin Ignacio, Officer-in-Charge of FISD, two requirements as a matter of procedure for the importation of regulated chemicals and plastic resins.

The prosecution rested without presentation of the originals of any of the documents cited or included in its complaint, save for two (2) documents. On July 06, 2017, the Court through a Resolution[5] only admitted Exhibits "P-1", "P-1-a", "P-2", and P-2-a", and denied admission of the remaining of the prosecution's documentary evidence for being mere photocopies and for failure to present the originals for comparison.

Hence, the present Demurrers to Evidence filed by the above-named accused.

On July 20, 2017, the Court received the subject Demurrer to Evidence filed by accused Myla T. Dawal attached to her "Motion for Leave of Court To File Demurrer to Evidence", while accused Daniel A. Saporna filed his Demurrer to Evidence on October 03, 2017 *via* registered mail.

Both accused prays of this Court for their acquittal for failure of the prosecution to prove their guilt beyond reasonable doubt. They contend that none among the prosecution witnesses testified on their particular and respective participation in the commission of the alleged charge against them. Both accused underscored that both prosecution witnesses, Nemesio C. Magno Jr. and Atty. Jose O. Lagac, Jr., admitted that they were not among the individuals who were investigated and recommended for prosecution during the investigation. Also in unison, they claim that no evidence of alleged conspiracy was ever introduced by the prosecution to show their alleged participation in the questioned transactions during the testimony of the prosecution's witnesses nor in the documentary evidence presented.

In addition, accused **DANIEL A. SAPORNA** avers that prosecution witness, Nemesio C. Magno Jr. even stated in his testimony that he did not actually know what was the participation of the accused in the alleged crime. Accused Daniel A. Saporna was a mere processor/coordinator of KSN, an ordinary rank-and-file employee, whose duty was to process the company's airfreight transactions as he was assigned to the BOC Office at the Ninoy Aquino International Airport in Pasay City. Thus, it would be improbable for him to be involved in the alleged crime which involves a sea freight transaction that allegedly happened at MICP in Manila. Being a mere employee of the company, which allegedly facilitated the illegal importations, would not standing alone, make him liable for the alleged infraction.

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[5] Docket, pp. 1478-1481.

Finally, to prove conspiracy, there must be direct evidence that each of the accused committed act or acts in furtherance of the common criminal purpose, which the prosecution failed to prove in this case.

In addition, accused **MYLA T. DAWAL** avers that her name was not even cited by any of the witnesses for the prosecution. The only documentary evidences admitted for the consideration of the Court (*i.e,* Exhibits "P-1" and "P-1-a": Referral for Preliminary Investigation dated April 07, 2006 and Exhibits "P-2" and "P-2-a": Complaint-Affidavit of Atty. Jose O. Lagac dated April 20, 2006) prove nothing but the fact of referral for preliminary investigation of the case to the Department of Justice, which shows no evidence of her culpability.

On September 19, 2017, this Court issued a Resolution requiring the prosecution to comment on (a) accused Myla T. Dawal's Demurrer to Evidence within ten (10) days from notice, and (b) accused Daniel A. Saporna's Demurrer to Evidence within ten (10) days from receipt of the same.[6] However, the prosecution failed to do so.[7] Thus, pursuant to the Resolution issued on September 19, 2017, both accused's Demurrer to Evidence are submitted for resolution.

The Court shall now resolve both accused's Demurrer to Evidence jointly.

A demurrer to evidence is defined as 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 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. In passing upon the sufficiency of the evidence raised in a demurrer, the court is merely required to ascertain whether there is competent or sufficient proof to sustain the indictment or to support a verdict of guilt.[8]

In criminal cases, the demurrer to evidence partakes of the nature of a motion to dismiss the case for failure of the prosecution to prove the guilt of accused beyond reasonable doubt.[9] Under Section 23, Rule 119 of the Revised Rules of Criminal Procedure, 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.[10]

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6 *Id.* at p. 1514-1516.

7 Records Verification Report issued by the Judicial Records Division on November 21, 2017 stating that the Prosecution failed to comment on Accused Daniel A. Saporna's "Demurrer to Evidence" and on Accused Myla T. Dawal's "Demurrer to Evidence".

8 Juan G. Rivera v. People of the Philippines, G.R. No. 163996, June 09, 2005.

9 Anamer Salazar v. The People of The Philippines and J.Y. Brothers Marketing Corporation, G.R. No. 151931, September 23, 2003.

10 **Section 23.** *Demurrer to evidence.* — After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the

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In the case at bar, the Amended Information charge the offense of "various fraudulent practices against customs revenue" or technical smuggling, through the use of spurious import permits and falsified house bills of lading in the application for transshipment permits for the unlawful release of the resin shipments, making it appear that the import permits were issued to Mitsuwa, Asaba and ZPI, when in fact they were forged and actually issued to other companies.

In various fraudulent practices against customs revenue, also known as technical smuggling, the goods and articles are brought into the country through fraudulent, falsified or erroneous declarations, to substantially reduce, if not totally avoid, the payment of correct taxes, duties and other charges. Such goods and articles pass through the BOC, but the processing and clearing procedures are attended by fraudulent acts in order to evade the payment of correct taxes, duties, and other charges. Often committed by means of misclassification of the nature, quality or value of goods and articles, undervaluation in terms of their price, quality or weight, and misdeclaration of their kind, such form of smuggling is made possible through the involvement of the importers, the brokers and even some customs officials and personnel.[11]

The fraud contemplated by law must be intentional fraud, consisting of deception, willfully and deliberately dared or resorted to in order to give up some right. The offender must have acted knowingly and with the specific intent to deceive for the purpose of causing financial loss to another; even false representations or statements or omissions of material facts come within fraudulent intent. The fraud envisaged in the law includes the suppression of a material fact which a party is bound in good faith to disclose. Fraud is not confined to words or positive assertions; it may consist as well of deeds, acts or artifice of a nature calculated to mislead another and thus allow one to obtain an undue advantage.[12]

Thus, to sustain conviction, the prosecution must prove all the elements of the crime allegedly committed by both accused – that the subject resins were imported through the use of forged import permits with IP Form Serial Nos. 2691485, 2691484, 2691487, 2691479 and 2691482, to make it appear that proper and correct taxes and duties due thereon had been duly paid by the importer or shipper, causing its release from the BOC, to the prejudice of the Government in an amount equivalent to Php4,183,732.00.

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prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court...

11 Bureau of Customs v. The Honorable Agnes Vst Devanadera, Acting Secretary, Department Of Justice; Honorable Jovencito R. Zuno, Pedrito L. Rances, Arman A. De Andres, Paul Chi Ting Co, Kenneth Pundanera, Manuel T. Co, Sally L. Co,, Stanley L. Tan, Rochelle E. Vicencio, Liza R. Magaway, Janice L. Co, Vivencio Abano, Greg Yu, Edwin Agustin, Victor D. Piamonte, Unioil Petroleum Philippines, Inc., And Oilink, International, Inc., G.R. No. 193253, September 08, 2015.

12 *Id.*

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Crucial to the foregoing and undoubtedly the best evidence to prove such are the alleged falsified documents themselves, the originals of which were not presented to the Court, for its appreciation and evaluation, despite having been cited or mentioned in the testimonies of prosecution witnesses.

The prosecution likewise failed to substantiate its allegation that the import permits presented were forged, since the documents which were formally offered in evidence, such as but not limited to master bills of lading, house bill of lading, the corresponding real import permits, transshipment permits and letters of disclaimer of ownership, were denied admission for failure to present the originals thereof for comparison. Section 3, in relation to Section 4 of Rule 130 of the Rules of Court, provides that "when the subject of inquiry is the content of the document itself, as in the instant cases, no evidence shall be admissible other than the original documents itself" subject to certain conditions, none of which is obtaining in the present criminal cases.

Left with no documentary evidence to substantiate the indictments except for two (2) documents which only summarized the alleged violation committed, the prosecution capitalized on the testimonies of its witnesses which proved futile as well.

The testimony of prosecution witnesses Nemesio C. Magno Jr. and Atty. Jose O. Lagac, Jr. centered on their investigation of the reported use of five (5) spurious import permits to effect technical smuggling in the MICP on January 2006. However, both witnesses declared that both accused were not investigated upon nor among those recommended to be charged in their Investigation Report. More importantly, the witnesses did not specify the specific participation of any of the accused in the alleged use of spurious documents to commit technical smuggling.

The testimony of witness Fernando H. Penus also did not help the prosecution's cause. His testimony only explained how the investigators discovered the forgery made, but its bears no material relevance on the alleged crime committed with fraud by both accused and their alleged conspiracy.

Not a shred of proof was adduced to give even a hint that both accused, in concerted efforts and conscious design or common purpose committed the alleged technical smuggling through the use of forged import permits.

Article 8 of the Revised Penal Code provides that there is conspiracy when two or more persons agree to commit a crime and decide to commit it. Direct proof is not essential to prove conspiracy; it may be established by acts of the accused before, during and after the commission of the crime charged, from which it may be logically inferred the existence of a common purpose to commit the same. The prosecution must prove conspiracy by the same quantum of evidence as the felony charged itself.[13]

The Supreme Court in *Violeta Bahilidad v. People of the Philippines*,[14] held that conspiracy cannot be presumed and must be established by evidence, *viz:*

> "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."

Moreover, there must be overt acts to prove conspiracy, as explained in *Gerry A. Salapuddin v. Court of Appeals*[15]:

> "Relationship, association and companionship do not [by themselves] prove conspiracy...It must be shown that the person concerned has performed an overt act in pursuance or furtherance of the complicity. In fact, mere knowledge, acquiescence or approval of the act, without the cooperation or approval to cooperate, is not sufficient to prove conspiracy. There must be positive and conclusive factual evidence indicating the existence of conspiracy, and not simple inferences, conjectures and speculations speciously sustained because 'it cannot be mere coincidence.'"

Let it be stressed that in every criminal prosecution, the State must prove beyond reasonable doubt every element of the offense alleged in the complaint or information.[16] The prosecution has the *onus probandi* in establishing the guilt of the accused. *Ei incumbit probatio qui dicit, non que negat*, i.e., for he who asserts, not he who denies, must prove.[17]

In the case at bar, the prosecution miserably failed to discharge this burden.

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[13] People of the Philippines v. Jose Bulan and Allan Bulan, G.R. No. 143404, June 08, 2005.
[14] G.R. No. 185195, March 17, 2010.
[15] G.R. No. 184681, February 25, 2013.
[16] Kenneth Ngo v. People of the Philippines, G.R. No. 155815, July 14, 2004.
[17] People of the Philippines v. Florentino Quijano Sr., G.R. Nos. 144523-26, June 10, 2003.

Where the evidence does not show beyond moral certainty that the person charged was one of the perpetrators of the offense, acquittal necessarily follows. The constitutional presumption of innocence must be upheld.[18]

WHEREFORE, the Demurrers to Evidence respectively filed by accused Myla T. Dawal and Daniel A. Saporna are **GRANTED**. The cases against them are **DISMISSED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[18] People of the Philippines v. Lito Limpangog and Jerry Limpangog, G.R. Nos. 141438-40, February 03, 2003.

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