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 03 2016
8:55 a.m.

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RESOLUTION

FABON-VICTORINO, J.:

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

(1) Teresita M. Arquero and Jose B. Anacan, on October 5, 2015;

(2) Reynaldo T. Dizon, on October 6, 2015;

(3) Joel Bagio and Arlene Mamaed, on October 12, 2015;

(4) Gloria Tolentino Agbayani, on October 15, 2015;

(5) Roberto E. Jose, on October 21, 2015;

(6) Harold De Ramos, on November 3, 2015;

(7) Wendelyn G. Cabang, on November 3, 2015; and

(8) Teresita V. Jugado, on November 12, 2015.

Under the Amended Information[1] dated June 10, 2009 and docketed as C.T.A. Criminal Case No. O-135, they are charged with 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.

They are 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 the Amended Information[2] dated July 1, 2009, docketed as C.T.A. Criminal Case No. O-136.

In the Resolution[3] dated June 24, 2009, C.T.A. Criminal Case No. O-136 was consolidated with C.T.A. Criminal Case No. O-135 and were jointly heard.

After the prosecution rested, the named accused filed their respective Demurrers to Evidence underscoring the Constitutional presumption of innocence in their favor banking on the non-admission of all the documentary exhibits offered in evidence for being mere photocopies of the purported documents. Moreover, none among the prosecution witnesses testified on their particular and respective participation in the commission of the alleged unlawful importations. Also in unison they claim that no evidence of alleged conspiracy was ever introduced by the prosecution to show joint and concerted efforts on their part to falsify Import Entry and Internal Revenue Declarations (IEIRDs) No. 69301276, 69097944, 69301242 and 69301224, subject of the two criminal complaints, to make it

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[1] Docket pp. 1116-1119, CTA Crim. Case No. O-135, Volume II; This is the second Amended Information, the first being dated April 30, 2009, docket pp. 1051-1054 CTA Crim. Case No. O-135, Volume II
[2] Docket pp. 1131-1134, CTA Crim. Case No. O-136, Volume II, amending the Information dated March 27, 2009
[3] Docket pp. 1077-1082, CTA Crim. Case No. O-135, Volume II

appear that the proper and correct taxes on the alleged importations have been paid when actually not.

In addition, accused **JOSELITO ANACAN** avers that his name was not even cited by any of the witnesses for the prosecution. He was a mere janitor of Great Harbour Forwarding Services Corporation (Great Harbour), whose duty was merely to maintain and clean the office premises and run errands for its personnel. Being a mere employee of the company which allegedly facilitated the illegal importations, would not, standing alone, make him liable for the alleged infractions.

Accused **Teresita Arquero** shares the same view saying that no prosecution witness testified on her connection with Great Harbour much more her actual participation in the alleged falsification and non-payment of correct and proper taxes on the imported items. There was also no evidence of common intent among the accused to give even a shred of information as to the existence of conspiracy among them.

On account of the foregoing stance, accused **REYNALDO T. DIZON** concludes that the burden of proof remained with the prosecution and never shifted to them justifying non-presentation of defense evidence hinged on the tenet that the verdict in criminal cases depends on the strength of the evidence of the prosecution. The prosecution, however utterly failed in this regard.

Since the prosecution was unable to present the originals or even adduce secondary evidence of the alleged falsified IEIRDs claimed to have been used to facilitate the illegal importation and non-payment of proper and correct taxes, he should be acquitted. Without any proof of the falsification of the IEIRDs or non-payment of proper and correct taxes on the importations made by Great Harbour, no crime may be attributed to him and the rest of the accused warranting a verdict of acquittal.

Further, his name was not indicated even in the disallowed IEIRDs themselves. Granting that the name Reynaldo T. Dizon appeared in the Amended Articles of Incorporation of Great Harbour as one of its directors, the said documents, being a mere photocopy, could not be used to establish his culpability. Besides, being a director of the corporation, by itself, would not automatically make him guilty of the offenses charged.

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 is not attendant in this case.

Accused **JOEL BAGUIO** and **ARLENE MAMAED** lean on the non-admission of all the documentary exhibits for the prosecution. As a consequence thereof, they say that the prosecution simply had no evidence to back up the accusations against them for alleged involvement in the subject unlawful importations or smuggling.

Accused **GLORIA TOLENTINO AGBAYANI** zeroes in on the dearth of evidence against her, both documentary and testimonial, resulting in the prosecution's failure to prove her guilt beyond reasonable doubt warranting the dismissal of the cases and her acquittal. Without proof of her actual participation and evidence that she conspired with the other accused to commit the offenses charged, the accusation against her must fail.

Finally, the fact that her name appeared in the Amended Articles of Incorporation of Great Harbour as one of its directors is inconsequential in the absence of any proof that she wilfully and knowingly assented to the commission of the alleged unlawful acts of the company.

For accused **ROBERTO E. JOSE,** even the testimonies of the three (3) prosecution witnesses lack luster to even induce belief that the crimes attributed to him and his co-accused were indeed committed. Not even the alleged conspiracy was substantiated to implicate all of them.

Upholding the positions of his co-accused, accused **HAROLD DE RAMOS** posits that without the original documents alleged to have been falsified resulting in non-payment of correct or proper taxes on the subject importations, the accusation for violations of Sections 3602 and 3601 of the TCCP filed against them cannot stand. The testimonies of the prosecution witnesses focused only on the creation of Task Force Renda by the Bureau of Customs (BOC) to investigate reports about the processing of two sets of IEIRDs to defraud the government of taxes on the covered importations. However, the original documents that would prove falsification were never presented in court. Much more, there was no evidence, documentary or testimonial, that he was the customs broker who processed the falsified IERDs or that he was an employee of Great Harbour, the alleged importer. Most of the accused were implicated on the mere assumption that they were under the employ of Great Harbour, but even the alleged employment was not established.

Like accused janitor Jose Anacan, **WENDELYN CABANG** admits connection with Great Harbour. However, she was quick to explain that as an in-house customs broker for Great Harbour, she merely relied on the documents provided to her by the shipper or importer such as the bill of lading, packing list, letter of credit, invoices, import entry declaration, and the Central Bank release certificate. She was not to inquire beyond the information or entries appearing in the given documents in the preparation and filing of the entry covering the shipment. As regards the present cases, she computed and indicated in the IEIRDs of the subject shipment the correct taxes for payment by the importer. However, in court, the prosecution presented only machine copies of the IEIRDs alleged to have been falsified, which the Court did not admit in evidence leaving the prosecution without any proof to show that she prepared the falsified IEIRDs.

More importantly, mere allegation that most of the accused in the present cases were under the employ of Great Harbour is not sufficient proof of conspiracy.

Accused **TERESITA V. JUGADO** capitalizes on the admission by the prosecution witness that the first set of IEIRDs involved in these cases which she allegedly prepared were not used in connection with the release of the contraband. For her, this admission gives teeth to the defense that she had no part in the alleged smuggling. Moreover, there was no evidence that she had a hand in the falsification of the alleged second set of IEIRDs utilized for the release of the subject unlawfully imported items.

Although the prosecution admits absence of any documentary evidence to prove the accusations against accused, it still insists that the cases against them remain strong to justify its desired conviction. Allegedly, the testimonies of its witnesses were abundant proof that unlawful importations were committed in conspiracy by all the accused through the use of falsified IEIRDs and that only partial payments were made to effect the releases of the imported goods in violation of Sections 3601 and 3602 of the TCCP.

Moreover, the photocopies of the IEIRDs, although not admitted, were nonetheless identified by its witnesses rendering them part of their respective testimonies.

Without citing particularities, the prosecution opines that "individual participation of the accused can be sufficiently established when they conspired with one another to commit the same (offense charged)," in the series of non-isolated transactions - four (4) with the BOC and four (4) with Equitable PCI-Bank - to consummate the illegal importations.

Finally, the prosecution's witnesses also testified that proper and lawful duties and taxes were not paid on the subject importations, a clear violation of Sections 3601 and 3602 of the TTCP, warranting accused' presentation of evidence to controvert it.

To prove the accusations against the accused, the prosecution presented as witnesses Angelito Navarro, Virgilio Pablico, Teresita P. Lorico, and Lani Ma. M. Salazar.

Special Agent II of the Enforcement and Security Service of the Bureau of Customs (BOC) since 1990, **Angelito Navarro**,[4] testified that he was a member of Task Force Renda, who collaborated with Attorneys Floro G.

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[4] See Minutes of hearing dated September 21, 2011, docket pp. 2495-2498 Volume 4; Minutes of hearing dated December 7, 2011, docket pp. 2603-2605, Volume 4; Minutes of hearing dated January 11, 2012, docket pp. 2627-2628, Volume 5; and Minutes of hearing dated March 7, 2012, docket pp. 2677-2679, Volume 5

Calixihan, Willie B. Sarmiento, Julito L. Doria, and SA I Roque Daculug in the investigation of the subject unlawful importations.

It appeared from their investigation that from October 2005 to February 2006, Great Harbour facilitated the documentation and processing of payment of taxes and duties on imported items based on seventy five (75) IEIRDs at the port of Manila. These IEIRDs, with spurious BOC Official Receipts, made it appear, to the contrary, that the proper taxes and duties had been duly paid.

In the Amended Articles and General Information Sheet of Great Harbour the following names appeared, to wit: Enriquito Dizon as Chairman, Reynaldo Dizon as Corporate Secretary, Roberto Jose as Treasurer, Gloria Lim Tolentino, Liberty De Ramos as General Manager, Harold de Ramos, Walter de Ramos, Elena Ambrocio, Atty. Eduardo Uybuco, Roderick Tagayon, Arlene Mamaed, and Jose Anacan.

He further claimed that Great Harbour processed the documents and payments of taxes of the subject importations in behalf of the consignee, NB Duque General Merchandise, represented by one Nelson B. Duque.

The IEIRDs of these importations were processed by accused Teresita Jugado of Equitable Bank and paid partly through Tax Credit Certificate (TCC) and partly through cash by the broker. The payments were electronically transmitted to the Bangko Sentral ng Pilipinas (BSP), which in turn transmitted them to the BOC. However, no such TCC existed to partly settle the taxes and duties due on the subject importations.

Although the IEIRDs processed by accused Teresita Jugado were not presented to the BOC but another set of IEIRDs which was processed through Security Bank, it was the payment electronically transmitted to the BOC by Equitable Bank that was utilized to secure the release of the imported items.

Investigation further showed that another payment in behalf of Great Harbour was made by Security Bank but the latter issued a certification to the contrary.

After investigation, he, Attorneys Floro Calixihan and SA II Roque Daculug executed a Joint Complaint Affidavit. All the documents used during the investigation were turned over to the RATS Group of the BOC. Subsequently, the documents particularly the original IEIRDs could no longer be located.

The witness admitted that the name of accused Teresita Arquero neither appeared in the Joint Complaint Affidavit they executed, nor in any of the IEIRDs that he cited in his testimony. Task Force Renda did not also find any act or participation of accused Teresita Arquero in the unlawful importations. The same is true with accused Roberto Jose and Wendelyn Cabang.

Witness **Virgilio Pablico,**[5] Chief of Legal Office of the Philippine National Police Criminal Investigation and Detention Group (PNPCIDG) stationed at Camp Crame, Quezon City, testified that on February 28, 2006, he assisted Task Force Renda in the investigation of alleged importations with spurious payments of customs duties and taxes.

The documents showed that from October 24, 2005 to February 16, 2006, Great Harbour, with the following officers, facilitated the documentation and processing of seventy five (75) IEIRDs for the importation of ceramic tiles from China:

1) Enriquito Dizon – owner/Incorporator
2) Liberty de Ramos – General Manager
3) Accused Harold de Ramos – Operations Manager from November 2005
4) Accused Walter de Ramos – Operations Manager prior to November 2005
5) Atty. Eduardo Uybuco – Finance Director
6) Josephine Fabro – Admin. Officer
7) Elena Ambrocio – documentation
8) Richard Salvacion – Customs Representative
9) Irving Tan – messenger
10) Accused Joselito Anacan – messenger

[5] See Minutes of hearing dated November 26, 2014, docket p. 3330, Volume 7; See also Judicial Affidavit dated November 18, 2014, docket pp. 3193-3212, Volume 7

11) Marilyn San Pedro - Secretary

Per the IEIRDs, the importations were undertaken by Great Harbour for (1) Hendan Trading, (2) Lucanas Trading, (3) Juroan Gen. Mer., (4) JB Fabrao Trading, (5) Arsicor Gen. Mer., and (6) NB Duque General Merchandise.

Of the 75 IEIRDs, twenty-one (21) were processed by accused Teresita Jugado of Equitable PCI Bank.

Per the document denominated as "Data Extracted from The Documents Obtained From The Liquidation And Billing Division, POM," four (4) out of the 75 IEIRDs pertain to N.B. Duque.

There were two (2) sets of IEIRDs prepared for the same importations to make it appear that correct duties and taxes have been settled when none have been actually paid.

The first set of IEIRDs with BOC Official Receipt showed that payments of duties and taxes were made through TCC to Equitable PCI Bank. On the other hand, the second set of IEIRDs showed full payment of taxes and duties through Security Bank.

While the IEIRDs processed by Equitable PCI Bank and those submitted to the BOC had the same serial numbers, there were discrepancies in some details such as the number of cartons involved and the mode of payments. On the other hand, Security Bank certified that it did not make any payments in relation to the subject importations.

The payments through TCC and cash were made through Teresita Jugado of Equitable PCI Bank, Binondo Branch. This caused the release of the imported items from the Port of Manila.

Witness **Virgilio Pablico,** confirmed that he did not mention the name of accused Gloria Lim Tolentino or Gloria Tolentino Agbayani in his testimony or in the respective Sworn Statements of Arlene Mamaed and Renan Reyes he adverted to in his testimony. He admitted that there was actually no basis for the filing of the case against Gloria Lim

Tolentino or Gloria Tolentino Agbayani. However, he assumed that she was included in the cases because her name appeared in the Articles of Incorporation of Great Harbour.

Witness **Teresita P. Lorico**[6] testified that in 1999, she was assigned at the Collection Division of the BOC as operator or verifier of the Automated Matching of Payment and Payables and the Payment Verification System at the Collection Division, Port of Manila. Her duties include matching the data of payments and documentation of import entries appearing in the computer system of the BOC with the actual import entry.

She was part of the investigation conducted in the case of N.B. Duque General Merchandise which involved four (4) import entries. The BOC computer system showed that duties and taxes have been paid for the said importations through Security Bank. She did not know however which bank electronically transmitted such payment to the BOC because the computer system was incapable to provide such information.

Usually upon payment of taxes, the bank places a rubber stamp on the actual import entry and the bank's name appears in the BOC computer system. In the subject importations, the payment details in the import entries, the originals of which she saw, matched with the data in the BOC computer system. Hence, she indicated in the said import entries that the payments matched with those appearing in the computer system. However, the CIDG showed her documents with discrepancies as to the payments of taxes made through Equitable PCI Bank using TCC.

In her Sworn Statement, **Lani Ma. M. Salazar**,[7] assigned at the BOC Collection Division in 2006, declared that she did not issue the alleged spurious BOC Official Receipts covering payments through TCC for the subject importations. She disowned the signature appearing in the

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[6] See Minutes of hearing dated November 26, 2014, docket p. 3330, Volume 7; See also Judicial Affidavit dated November 18, 2014, docket pp. 3096-3106, Volume 7
[7] See Minutes of hearing dated February 18, 2015, docket p. 3441, Volume 8; See also Judicial Affidavit dated February 13, 2015, docket pp. 3418-3424, Volume 8

alleged BOC Official Receipts. The rubber stampings were also different from that she was using.

The prosecution rested without presentation of the originals of any of the documents cited or included in its complaints. [8] It also failed to justify introduction and admission of secondary evidence based on the claim that the originals of the purported documents were lost and could no longer be located.

On April 21, 2015,[9] the Court denied admission of all of the prosecution's documentary evidence for being mere photocopies and for failure to present the originals for comparison. The ruling was affirmed in the Resolution dated July 9, 2015.[10]

Hence, the present demurrers to evidence filed by the above-named accused.

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.[11]

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.[12] 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.[13]

[8] Docket pp. 3446-3458, Volume 8
[9] Docket pp. 3757-3758
[10] Docket pp. 3845-3851, Volume 9
[11] Rivera vs. People, G.R. NO. 163996, June 09, 2005
[12] Salazar vs. People, G.R. No. 151931, September 23, 2003
[13] People vs. Sandiganbayan, G.R. No. 140633, February 04, 2002

Accused Teresita M. Arquero, Jose B. Anacan, Reynaldo T. Dizon, Joel Bagio, Arlene Mamaed, Gloria Tolentino Agbayani, Roberto E. Jose, Harold De Ramos, Wendelyn B. Cabang, and Teresita V. Jugado are charged with 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 TCCP, which reads 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 the 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 wilfully 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 wilful act or omission shall, for each offense, be punished in accordance with the penalties prescribed in the preceding section.

They allegedly committed the crime as described under the Amended Information dated June 10, 2009[14], in the following fashion:

> "That during the period of November 3, 2005 until December 2, 2005, in the City of Manila and within the jurisdiction of this Honorable Court, the above-named accused Enriquito Dizon, Reynaldo Dizon, Roberto Jose, Gloria Lim-Tolentino, Liberty de Ramos, Harold de Ramos, Walter De Ramos, Atty. Eduardo Uybuco, Josephine Fabro, Elena Ambrosio, Wendelyn C. Cabang, Teresita Arquero, Joel Bagio, Arlene Mamaed, Roderick Tagayon, Jose B. Anacan, employees/officers and directors of Great Harbour

[14] Docket pp. 1116-1119, CTA Crim. Case No. O-135, Volume II; This is the second Amended Information, the first being dated April 30, 2009, docket pp. 1051-1054 CTA Crim. Case No. O-135, Volume II

> Forwarding Services Corporation (GHFSC), Teresita V. Jugado, universal processor of Equitable-PCI Bank, Binondo Branch, and Renan S. Reyes, licensed custom broker, RSR Customs Brokerage, in conspiracy with Nelson B. Duque, consignee and proprietor of NB Duque General Merchandise, did then and there knowingly, unlawfully and feloniously import/bring into the Philippines under IEIRDs Form Numbers 69301276, 69097944, 69301242 and 69301224, covering 21,490.00 cartoons of STC tiles, by means of falsified Import Entry and Internal Revenue Declarations (IEIRDs), making it appear that full payment taxes and duties were made as evidenced by the fake bank "rubber stamp" or "check write" to avoid the corresponding payment of the correct custom duties and import taxes in the aggregate amount of P3,192,416.00 to the damage and prejudice of the Philippine government."

The same accused are also charged with violation of Section 3601 of the same Code, which provides as follows:

> Sec. 3601. Unlawful Importation. — Any person who shall fraudulently import or bring into the Philippines, or assist in so doing, any article, contrary to law, or shall receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of such article after importation, knowing the same to have been imported contrary to law, shall be punished by a fine of not less than six hundred pesos nor more than five thousand pesos and imprisonment for not less than six months nor more than two years and, if the offender is an alien, he shall be deported after serving the sentence.
>
> When, upon trial for a violation of this section, the defendant is shown to have or to have had possession of the article in question, such possession shall be deemed sufficient evidence to authorize conviction, unless the defendant shall explain the possession to the satisfaction of the court.

The Amended Information[15] dated July 1, 2009 in C.T.A. Criminal Case No. O-136 states that the unlawful

[15] Docket pp. 1131-1134, CTA Crim. Case No. O-136, Volume II, amending the Information dated March 27, 2009

importation by the named accused was committed as follows:

> "That on or about February 16, 2006, in the City of Manila and within the jurisdiction of this Honorable court, the above-named accused Enriquito Dizon, Reynaldo Dizon, Roberto Jose, Gloria Lim-Tolentino, Liberty de Ramos, Walter De Ramos, Atty. Eduardo Uybuco, Josephine Fabro, Elena Ambrosio, Wendelyn C. Cabang, Teresita Arquero, Joel Bagio, Arlene Mamaed, Roderick Tagayon, **Jose B. Anacan**, employees/officers and directors of Great Harbour Forwarding Services Corporation (GHFSC**), Teresita V. Jugado, universal processor of Equitable-PCI Bank, Binondo Branch**, and Renan S. Reyes, licensed custom broker, RSR Customs Brokerage, in conspiracy with Nelson Duque, consignee and proprietor of NB Duque General Merchandise, did then and there knowingly, unlawfully and feloniously import/bring into the Philippines under IEIRDs Form Numbers 69301276, 69097944, 69301242 and 69301224, covering 21,490.00 cartoons of STC tiles with total assessed amount of P3,192,416.00, by filing two (2) sets of falsified Import Entry and Internal Revenue Declarations (IEIRDs) and other supporting documents, thereby making it appear that correct taxes or duties have been paid where in fact only less than that amount of duty legally due was paid, and in consequence thereof, the tiles covered by the IEIRDs were accordingly released.

Unlawful importation or smuggling is therefore committed by any person who (1) fraudulently imports or brings into the Philippines or (2) assists in importing or bringing into the Philippines any article, contrary to law, or (3) receives, conceals, buys, sells or in any manner facilitates the transportation, concealment, or sale of such article after importation, knowing the same to have been imported contrary to law.[16]

The phrase "contrary to law" in Section 3601 qualifies the phrases "imports or brings into the Philippines" and Assist in so doing" and not the word article.[17]

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[16] Salvador vs. People, G.R. No. 146706, August 15, 2005;
[17] Jardeleza v. People, 481 SCRA 638.

The fraud contemplated by law must be intentional fraud, consisting of deception, wilfully and deliberately dared or resorted to in order to give up some right. Fraudulent concealment presupposes a duty to disclose the truth and that disclosure was not made when opportunity to speak and inform was present. Fraud, as used in the provision, 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.[18]

Thus, to sustain conviction for the two offenses, the prosecution must prove all the elements of the crimes allegedly committed by the accused, i.e., that on separate occasions, importations were made by the accused; that they fall under any of the foregoing enumeration of persons liable for unlawful importations; that the unlawful importations were committed through the use of falsified IEIRDs Form Nos. 69301276, 69097944, 69301242, and 69301224 and other documents covering the subject importations and 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 the total amount of PH 3,192,416.00.

Crucial to the foregoing and undoubtedly the best evidence thereto are the alleged falsified documents themselves, the originals of which were not presented to the Court for its appreciation and evaluation, despite undertaking by the prosecution. Without the original documents containing the alleged falsified entries or forgery, one cannot make a definitive comparison which would establish falsification or forgery. A comparison based on a mere xerox copy or reproduction of the document under controversy cannot produce reliable results.[19]

The alleged spurious BOC Official Receipts which would tend to show the payments and the deficiency in the taxes and duties paid were not also adduced during the trial of the

[18] *Id.*
[19] Citibank, N.A. (Formerly First National City Bank) and Investor's Finance Corporation, Doing Business under the name and style of FNCB Finance vs. Modesta R. Sabeniano, G.R. No. 156132, February 06, 2007.

cases. They were merely cited or mentioned in the testimonies of prosecution witnesses.

The prosecution likewise failed to introduce documents to substantiate the other allegations in the two Amended Informations, such as but not limited to incorporation papers of the alleged importer and consignee, certificates of employment or any documents showing connections/relation of the accused to the alleged shipper and consignee of the contraband and documents from the named banking institutions. Worse and most intriguing is the prosecution's admission that even the machine copies of the purported IEIRDs allowed by the Court to be provisionally marked over the vehement and continuing objections of the accused were also lost.

Since only machine copies of the alleged falsified IEIRDs were formally offered in evidence they 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, the prosecution capitalize on the testimonies of its witness which proved futile as well.

The testimony of prosecution witness Angelito Navarro centered on the creation of Task Force Renda to investigate the reported use of seventy five (75) IEIRDs and spurious BOC Official Receipts to effect unlawful importation at the Port of Manila. However, he did not present any supporting documents, or at least a report or memorandum on the result of and in connection with such investigation to give credence to his declaration. Although he mentioned the name Teresita Jugado of Equitable Bank as the person who processed the documents and payments to the BOC, he readily admitted that these documents were not presented to the BOC for the release of the contraband but those prepared by Security Bank. Also per his admission, Security Bank issued a certification to the effect that it never processed or caused payments of taxes to the BOC for and in behalf of Great Harbour. The same witness further admitted that the investigation did not find any cause or reason to implicate Teresita Arguero, Roberto Jose and Wendelyn Cabang. Beyond the foregoing, no specific participation by any of the accused in the alleged falsification was cited. More importantly, he did not identify any of the accused in open court.

Witness Virgilio Pablico declared that he merely assisted in the subject investigation of Task Force Renda and based his conclusion from the documents provided to him which indicated that there were two sets IEIRDs processed with spurious BOC Official Receipts to frustrate collection of correct taxes and customs duties. The first set was allegedly processed by Equitable Bank while the second set, by Security Bank which caused the release of the contraband. Just like the first witness, no competent documents were adduced to back-up his testimony. Witness Pablico did not also specify the specific participation of any of the accused in the alleged falsification of IEIRDs in conspiracy to commit smuggling. He even concluded that the prosecution had no basis to criminally indict accused Gloria Lim Tolentino or Gloria Tolentino Agbayani.

The testimonies of witnesses Teresita P. Lorico and Lani Ma. M. Salazar also failed to save the day for the prosecution. Their testimonies bear no material relevance on the alleged crimes committed with fraud and in conspiracy.

As an operator or verifier at the Collection Division, Port of Manila, witness Lorico merely described how the BOC Automated Matching Payment and Payables and Payment Verification System worked and generated information pertaining to the subject importations. She testified that although she was part of the investigation conducted by Task Force Renda against N.B. Duque General Merchandise, her participation was limited to the matching of the information or entries in the documents provided to her with those generated by the computer system. The generated information revealed that payments of taxes for the importations were made through Security Bank without any indication as to who electronically transmitted such payments to the BOC as the computer system was incapable to generate the same. In open court, she found it hard to figure out how and where the documents with contrary information provided by the prosecution came from.

On the other hand, witness Salazar took the witness stand apparently to present herself with clean hands. She denied having issued the alleged spurious BOC Official Receipts showing payments of taxes and duties by the shipper, but without the pertinent documents, her testimony bears no relevance.

Finally, the prosecution claims that conspiracy exists to make the act of one the act of the other accused. However, not a shred of proof was adduced to give even a hint that the accused, in concerted efforts and conscious design or common purpose committed the alleged smuggling through the use of falsified IEIRDs.

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.[20]

In the case of *Violeta Bahilidad vs. People of the Philippines* [21], the Supreme Court elaborated that conspiracy exists "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

[20] People of the Philippines vs. Jose Bulan and Allan Bulan, G.R. NO. 143404, June 08, 2005.
[21] G.R. No. 185195, March 17, 2010.

essential that there must be a conscious design to commit an offense. Conspiracy is the product of intentionality on the part of the cohorts. In the present cases, no proof was adduced to show that the foregoing requirements are present.

Moreover, relationship, association and companionship do not by themselves prove conspiracy. xxx. 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 "[i]t cannot be mere coincidence.[22]

Let it also 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.[23]

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."[24] In this case, the prosecution miserably failed to discharge this burden as shown in the foregoing disquisition.

Where the evidence presented do not show beyond moral certainty that the accused were the perpetrators of the offenses charged, acquittal necessarily follows. Such acquittal becomes the Constitutional duty of the Court, [25] and the constitutional presumption of innocence in favour of the accused must be upheld.[26]

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[22] Gerry A. Salapuddin, vs. The Court of Appeals, Gov. Jum Akbar, and Nor-Rhama J. Indanan, G.R. No. 184681, February 25, 2013.
[23] Ngo vs. People, G.R. No. 155815, July 14, 2004
[24] People vs. Quijano, Sr., G.R. Nos. 144523-26, June 10, 2003
[25] People of the Philippines vs. Ernesto Fernandez, G.R. Nos. 139341-45, July 25, 2002
[26] People of the Philippines vs. Lito Limpangog and Jerry Limpangog, G.R. No. 141438-40, February 03, 2003

WHEREFORE, the Demurrers to Evidence respectively filed by accused 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, are **GRANTED**. Consequently, the named accused are hereby **ACQUITTED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice