REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

MAXIMO HERNANDEZ y MANIEGO, Alias MAXIMO H. HERNANDEZ, PONCIANO HERNANDEZ y BUCO, DOMINADOR LALU y PASCUAL, FELIPE MANGILIT y HERNANDEZ, MICHAEL MANLICLIC y VINUYA, DANILO SANTOS y SANGUYO and JOHNREY RETOBADO y PAGLINAWAN,
Accused.

CTA CRIM. CASE NO. O-379

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

Promulgated:
MAY 2 3 2018
m/ 1:38 p.m.

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DECISION

RINGPIS-LIBAN, J.

The Case

Accused Maximo Hernandez y Maniego alias Maximo H. Hernandez, Ponciano Hernandez y Buco, Dominador Lalu y Pascual, Felipe Mangilit y Hernandez, Michael Manliclic y Vinuya, Danilo Santos y Sanguyo and Johnrey Retobado y Paglinawan, all Board of Directors of Samahang Magsasakang Kapampangan at Katagalugan Multi-Purpose Cooperative (SMKKMC) were charged of Violation of Sections 101 and 3601 of the Tariff and Customs Code of the Philippines (TCCP), as amended, allegedly committed as follows:

"That on or about September 2, 2012, in Legaspi City, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with the evident intent to defraud the government of the Republic of the Philippines of the legitimate duties accruing to it from merchandise, imported into this country, conspiring, confederating and mutually helping and aiding one another, did then and there wilfully, unlawfully and knowingly fraudulently *(sic)* import or bring into the Philippines, or assist in so doing contrary to law the merchandise, to wit: declared as eighteen (18) thousand bags of *"Vietnamese Long Grain White Rice"* on board the vessel M/V "Minh Tuan 68" which arrived from Ho Chi Minh City, Vietnam, covered by Bill of Lading No. 4 and consigned to National Food Authority (NFA) "For and Account Of" (FAO) Samahang Magsasakang Kapampangan at Katagalugan Multi-Purpose Cooperative", with estimated taxes and duties amounting to **EIGHTEEN MILLION SEVEN HUNDRED SEVENTY NINE THOUSAND FIVE HUNDRED TWENTY EIGHT PESOS & TWELVE CENTAVOS (Php18, 779,528.12)**, thereby exceeding its rice importation quota allocation balance of 700 M/T 14,000 bags under the Private Sector Financed Program of National Food Authority (NFA) for the year 2012 and which were found to have been imported without the requisite import permit/authority from the National Food Authority (NFA), to the damage and prejudice of the government."

CONTRARY TO LAW.

On April 4, 2014, this Court issued a Resolution[1] ordering the issuance of warrants of arrest for accused Maximo Hernandez y Maniego alias Maximo H. Hernandez, Ponciano Hernandez y Buco, Dominador Lalu y Pascual, Felipe Mangilit y Hernandez, Michael Manliclic y Vinuya, Danilo Santos y Sanguyo and Johnrey Retobado y Paglinawa.

On May 7, 2014, this Court issued the Warrants of Arrest[2] for all the accused.

On May 28, 2014, accused Maximo Hernandez y Maniego alias Maximo H. Hernandez, Ponciano Hernandez y Buco, Dominador Lalu y Pascual, Felipe Mangilit y Hernandez, Michael Manliclic y Vinuya, Danilo Santos y Sanguyo and Johnrey Retobado y Paglinawan, voluntarily appeared and submitted themselves to the jurisdiction of this Court. They posted the required bail for their provisional liberty in the form of surety bond in the amount of One

[1] Docket, CTA Case No. O-379, pp. 206.
[2] Docket, pp. 208-214.

Hundred Twenty Thousand Pesos (P120,000.00) each, all dated May 27, 2014, issued by Alpha Insurance & Surety Co., Inc.[3]

The arraignment for all the accused was set on June 18, 2014. This was reset to July 9, 2014 for the reason that the counsel they engaged to represent them was not available.[4]

When arraigned on July 9, 2014, their counsel, Atty. Jovencio Evangelista, manifested that all the accused will not enter any plea and will let the Court enter the plea for them. Thus, pursuant to Section 1 (c), Rule 116 of the Revised Rules on Criminal Procedure, the Court entered a plea of not guilty for all the accused.

The Pre-Trial Conference was held on September 3, 2014.[5] The Pre-Trial order was issued on October 22, 2014.[6] The Amended Pre-Trial Order was issued on January 12, 2015.[7]

Trial thereafter ensued. To prove their case, the plaintiff presented five (5) witnesses, namely, Leovigoldo M. Dayoja, Atty. Raulito A. Villar, Dennis Barona, Joel Pinawin, and Divina B. Garido.

Plaintiff's first witness, *Leovigildo M. Dayoja*, Deputy Collector IV of the Bureau of Customs, testified as follows: that the primary functions of the District Collector are the collection of local revenues from foreign commodities and the suppression, prevention of smuggling and other forms of violation against customs revenue; he assumed his duties as District Collector of the Port of Legaspi sometime in September 2012 until 2013; on September 2, 2012 at around 9:45 o'clock in the morning, he was at his office in the Port of Legaspi when Customs Police Officer Oscar Guan came to his office and reported that they spotted a vessel anchored along the Legaspi Bay; thereafter, he instructed the officers to check what kind of vessel was seen at the bay because for foreign vessels, there is a requirement under Customs law that the notice of arrival should be submitted 24 hours before the arrival of the vessel; indeed, what was spotted was a foreign vessel named M/V Minh Tuan 68, a cargo vessel engaged in international trade; the notice of arrival of the vessel was submitted to the Port Operation Division on the following day, September 3; it was stated therein that the vessel will be arriving on September 5; Ship Agent Efren Lavarez went to his office to present the notice of arrival; he instructed the Port Operation Division to conduct boarding formalities which was done; after the boarding formalities, the customs personnel submitted to him the Inward Foreign Manifest,[8] Bill of Lading,[9] Port Load Survey Report[10]

[3] Undertaking, Docket, pp. 240-243, 267-270, 295-298, 322-325, 350-353, 378-381, 406-409.
[4] Resolution dated July 7, 2014, Docket, p. 486.
[5] Docket, p. 534.
[6] Docket, pp. 558-567.
[7] Docket, pp. 623-624.
[8] Exhibit "P-7."
[9] Exhibit "P-3."
[10] Exhibit "P-8."

and other documents; on September 5, Efren Lavarez went back to his office and filed a "Letter Request for Cancellation of Manifest at Port of Legaspi"[11] wherein it was stated that the consignees intends to redirect the vessel from the original destination of Port of Legaspi to the Port of Manila since there were no available warehouses to safe keep the 94,000 bags of rice; upon examination of the documents, he discovered that there was no import authority from the National Food Authority (NFA); on September 7, 2012, he issued an Alert Notice Re: M/V "Minh Tuan 86;"[12] he also discovered that the consignee of the cargo was the NFA but for the account of five (5) private corporations; he requested the ship agent to present import permit but the ship agent failed to produce the NFA authority and instead presented the notice of award and notice to proceed; the law enforcement officers made a recommendation for the issuance of a warrant of seizure and detention; consequently, he issued a Warrant of Seizure and Detention;[13] that there were two initial seizure proceedings conducted in Legaspi but the succeeding hearings were conducted in Manila because the parties requested for a change of venue; during the seizure proceedings, the Bureau of Customs was able to sell the cargoes through auction; he cannot recall the month but the auction happened in 2012; the Decision issued by Officer-in-Charge Chuchi L. Medina ordered the forfeiture of the cargo; he identified the Decision, marked as Exhibit "P-18;"[14] during that time, it was required insofar as rice importation is concerned to have an import authority from the NFA.

On cross examination, he testified that the Request for Cancellation of Foreign Inward Manifest was received by the Bureau of Customs on September 7, 2012; the ship agent has the right to request the cancellation of foreign inward manifest; he was the one who encoded the draft Alert Notice but he was not the one who signed the same; the Alert Notice was signed by his division chief; he was in Manila on September 7, 2012 when the Alert Notice was signed; there is no indication in the Bill of Lading[15] which is an instrument where all the cargoes are described and also the proof of ownership of the consignees, and which was prepared by the master of MV Mintuan, that the same was received by the Bureau of Customs; the master of the vessel submitted the Bill of Lading to the Bureau of Customs; he was not the hearing officer in this case; he was supposed to sign the Decision[16] but since he was transferred to Manila, the new District Collector took his place; that the Bureau of Customs in Legaspi City has the registered mail receipt of the Warrant of Seizure and Detention but doubts if the same was presented during the seizure proceedings; that the proper time to amend the inward manifest is before the formal entry is filed.

The plaintiff's second witness, *Atty. Raulito A. Villar*, a practicing lawyer, testified as follows: that at the time of the incident, he held the position of Attorney II at the Legal Service of the Bureau of Customs; he was then

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[11] Exhibit "P-15."
[12] Exhibit "P-4."
[13] Exhibit "P-5."
[14] Docket, pp. 923-944.
[15] Exhibit "P-3."
[16] Exhibit "P-18."

assigned at the Run After the Smugglers and his duty was to profile cases and investigate cases in violation of the Tariff and Customs Code and other related cases in the Bureau of Customs; he was assigned as the prosecutor in this case; he recommended that a case for violation of Article 101 and Section 3601 of the Tariffs and Customs Code be filed against the members of the SMKKMC; he cannot recall the exact names of the persons involved in the investigation; he was able to know the responsible officers of the corporation through the Articles of Cooperation that was filed with the Cooperative Development Authority (CDA); he identified the Certificate of Registration, marked as Exhibit "P-6;"[17] he learned that the Cooperative was the consignee of the shipment based on the submitted Load Port Survey Report,[18] Inward Foreign Manifest[19] and Bill of Lading.;[20] when SMKKMC failed to present the import permit, District Collector Dajoya issued the first alert order; he identified the Alert Notice, marked as Exhibit "P-4"[21] after the issuance of the Alert Notice, SMKKMC still failed to produce the import permit from the NFA; during the investigation, Mr. Dayoja submitted to him the Warrant of Seizure and Detention;[22] he executed a Complaint Affidavit in connection with this case, marked as Exhibit "P-2;" he also executed a Reply Affidavit in connection with this case, marked as Exhibit "P-13;" he presented the letter referral[23] signed by Commissioner Rosano Rufino P. Biazon to prove that this case was filed with prior authority from the Commissioner of Customs; he learned that the subject shipment was forfeited in favor of the government because he received a Decision from the Office of the District Collector of the Port of Legaspi.

On cross examination, he testified that per Article 8 of the Cooperative's Amended Articles of Cooperation, the founding Directors are Maximo M. Hernandez, John Rey P. Retobado, Ponciano Hernadez, Dominador P. Lalu, Felipe H. Mangilit, Michael V. Manliclic and Danilo S. Santos; the old Certificate of Registration/Confirmation was dated December 15, 2008, while the new Certificate of Registration[24] was issued on February 1, 2010; he was not aware that there was a change of membership in the board of directors at the time that he conducted the investigation in 2012; he did not see any board resolution of SMKKMC in connection with the importation of the subject shipment.

The plaintiff's third witness, *Dennis Barona*, Grains Operation Officer III, Grains Marketing Operation, Foreign Operation Division of the NFA testified as follows: that the Certification signed by Joseph Y. Dela Cruz, Assistant Administrator for Marketing Operations[25] is the same Certification issued by Mr. Dela Cruz with regard to this case; the certification pertains to the non-issuance of certificate of undertaking, certificate of official importation and statement of account, and any import permit with regard to the consignee

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[17] Docket, p. 857.
[18] Exhibit "P-8."
[19] Exhibit "P-7."
[20] Exhibit P-3.".
[21] Ibid. p. 853.
[22] Exhibit "P-5."
[23] Exhibit "P-1."
[24] Exhibit "P-6."
[25] Exhibit "P-14."

SMKKMC; this means that there is no import authority issued to SMKKMC by the NFA.

On cross examination, he testified that he was instructed by Assistant Administrator Joseph Y. Dela Cruz to check the records of SMKKMC if an import document was issued to the latter as an importer. He further testified that the import permit or the certificate of undertaking or the certificate of importation was signed by the NFA Administrator.

The plaintiff's fourth witness, *Joel Pinawin*, Intelligence Officer 1, Chief of Customs Intelligence and Investigation Service at Ninoy Aquino International Airport, testified as follows: that at the time of the incident, he was the Chief of Customs Intelligence and Investigation Service for the Port of Batangas and Legaspi; he is familiar with this case because he was one of those who conducted the verification on the arrival of the Vietnamese vessel on September 2, 2012; he received an information that there was a vessel approaching the Port of Albay on September 2, 2012; his subordinates together with the Customs Police and the Philippine Coast Guard of the Port Operation Division of Legaspi went to the ship to verify the information and to check whether the vessel was a local or international vessel; his subordinates informed him that there was no notice of arrival of the foreign vessel loaded with 94,000 bags of Vietnamese white rice and it was only on September 3 that the ship agent filed an arrival notice and requested that the date of arrival be changed to September 5, but the District Collector denied the same; there is a procedure at the Bureau of Customs that the shipping agent must file an arrival notice at least within twenty four (24) hours prior to the arrival of the vessel; the purpose of the 24 hour notice rule is to give the Bureau of Customs time to check the documents of the cargos; thereafter, the District Collector issued an Order to conduct the boarding formalities; the ship captain failed to submit the import permit from the NFA; in the Alert Order[26], he and his subordinates were ordered to check the validity of the documents submitted and to inspect the cargos especially the volume, quality and weight of the cargos; he informed Gen. Danny Lim that an Alert Order was issued on the 94,000 bags of Vietnamese rice on board M/V Minh Tuan 68; Gen. Danny Lim communicated with Dep. Comm. Manzano thru Atty. Ramon Coyco to furnish the Central Intelligence And Intervention Service (CIIS) with a copy of the allocation balance of the cooperatives concerned; Atty. Ramon Coyco submitted to the CIIS the balance of the allocation quota of the cooperatives; he discovered that four out of the five cooperatives who were consignees of the shipment exceeded their allocation quota at that time. SMKKMC was one of those cooperatives who exceeded their allocation quota. On September 19, he made a final report regarding the apprehension of the 94,000 bags of rice and he wrote in his report that four cooperatives out of the five cooperative consignees exceeded their allocation quota; and he identified the report that he executed which was marked as Exhibit "P-19."

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[26] Exhibit "P-4."

On cross examination, he testified that his office conducted verification on whether M/V Minh Tuan 68 was a foreign vessel or not; he delegated the conduct of investigation to his subordinates; he has no personal knowledge on the preparation of the Alert Notice; in the memorandum that he executed, he recommended for the immediate hearing of the case because perishable goods were involved.

He further testified that the shipping agent failed to submit the import permit required by the Bureau of Customs; what was only submitted were the Bill of Lading, Inward Foreign Manifest and the Storage Plan; no consular reports were submitted; he is sure that hearing was conducted after he made a recommendation but he is not aware when the hearing started.

The plaintiff's last witness, *Divina B. Garrido*, Customs Operation Examiner III of the Bureau of Customs, testified as follows: That she is familiar with this case because she was the examiner who computed the customs duties and taxes due on the subject shipment; SMKKMC was one of the cooperatives who imported the Vietnamese long grain white rice at the Port of Legaspi; she identified that Load Port Survey,[27] Bill of Lading,[28] and Inward Foreign Manifest[29] where the name of SMKKMC appeared; she reduced in writing the computation that she made; during the hearing, she identified the said computation marked as Exhibit "P-23;" the value that she used in computing the dutiable value of the 18,000 bags of rice is invoice value including the freight and insurance multiplied by the prevailing exchange rate at that time; the computation was in US dollar; the prevailing rate at the time of computation was 40.6620; she prepared the computation prior to the auction of the rice; based on her computation, the customs duty for the 18,000 bags of rice of SMKKMC is Seven Million Nine Hundred Thirty Nine Thousand Eleven Pesos and Fifty-three Centavos (P7,939,011.53), for the Value-Added Taxes is Two Million Nine Hundred Thousand Two Hundred Forty Pesos and Six Centavos (P2,900,240.06), import processing fee of One Thousand Pesos (P1,000.00), and Customs Documentary Stamp of Two Hundred Sixty-five pesos (P265.00); the total customs duty is Ten Million Eight Hundred Forty Thousand Five Hundred Sixteen Pesos and Fifty-nine Centavos (P10,840,516.59).[30]

On cross examination, she testified that she made amendments and corrections on the computation with regard to the year and sum of taxes; he informed Atty. Raul Chavez regarding the amendments that she made before June 3, 2014. She did not furnish SMKKMC a copy of the computation because it is not their standard operating procedure to inform the importer of the computation; she prepared the computation only for the landed cost for the auction of the rice.

[27] Exhibit "P-8."
[28] Exhibit "P-3."
[29] Exhibit "P-7."
[30] Exhibit "P-23-d."

On August 25, 2018, plaintiff filed a "Motion for Further Re-Marking and Prosecution's Formal Offer of Documentary Exhibits."[31] On September 18, 2015, the Court received accused's "Comment to Prosecution's Formal Offer of Documentary Evidence."[32]

In the Resolution[33] dated October 6, 2015, the Court granted plaintiff's Motion for Further Remarking of documentary exhibits. Accordingly, Exhibits "P-13-A", "P-20-A" and "P-6-A" are hereby re-marked as Exhibits "P-11-A", "P-18-A" and "P-20-A," respectively. In the same Resolution, the Court resolves to admit Exhibit "P-1", "P-1-A", "P-2", "P-2-A", "P-3", "P-3-A", "P-3-B", "P-3-C", "P-4", "P-5", "P-5-A", "P-6", "P-6-A" but marked as "P-6-B", "P-7", "P-7-A", "P-7-B", "P-8", "P-8-A", "P-8-B", "P-9", "P-10", "P-10-A", "P-10-B", "P-11", "P-11-A", "P-12", "P-12-A", "P-13", "P-14", "P-15", "P-16", "P-17", "P-18", "P-18-A", "P-18-A", "P-18-A", "P-19", "P-20", "P-20-A", "P-21", "P-21-A", "P-21-B", "P-21-C" and "P-21-D."

On October 19, 2015, all accused, through their counsels filed a "Motion for Leave to File Demurrer to Evidence." During the hearing on October 28, 2015, this Court granted accused's "Motion for Leave to File Demurrer to Evidence." On November 9, 2015, all accused through filed their counsels, filed a "Demurrer to Evidence" praying for the outright dismissal of their case.

On March 22, 2016, the Court issued a Resolution denying the Demurrer to Evidence filed by all the accused.[34]

On the other hand, the defense presented accused Maximo Hernandez who testified on May 4, 2016.

Accused *Maximo Hernandez*, 56 years old, widow, a resident of Mapaniqui, Candaba, Pampanga testified as follows: that he is familiar with the Samahan ng Magsasakang Kapampangan at Katagalugan Multi-Purpose Cooperative because he is one the founding directors; the Articles of Cooperation[35] is the proof that he is one of the founding directors of SMKKMC; the other founding directors of SMKKMC are Ponciano Hernandez, Dominador Lalu, Felipe Mangilit, Michael Manliclic, Danilo Santos and Johnrey Retobado. However, Ponciano Hernandez, Dominador Lalu, Felipe Mangilit, Michael Manliclic, Danilo Santos are no longer members of the SMKKMC since 2011 pursuant to Article 10 of their Amended Articles of Cooperation;[36] Johnrey Retobado is still a member of the cooperative; it is not true that he and his co-accused conspired to import Vietnamese long grain white rice on board MV Minh Tuan 68; as far as they know, they did not join

[31] Docket, pp.838-844.
[32] Docket, pp.956-970.
[33] Docket, pp. 961-962.
[34] Docket, pp.1066-1075.
[35] Exhibit "A-1."
[36] Exhibit "A-2."

any rice importation; he did not sign any document in connection with the subject importation of rice.

On cross examination, he testified that accused Ponciano Hernandez, Dominador Lalu, Felipe Mangilit, Michael Manliclic, Danilo Santos are no longer members of SMKKMC; he did not finish his Grade 2 in school; he cannot read English but he can read names; when they had a meeting, those who are learned were the ones who discussed about Article 10 of the Amended Articles of Cooperation; he is still the chairman of SMKKMC; they have proof that the names of the new members of the Board of Directors were received by the CDA; however, he did not bring any proof of receipt that time; he has no knowledge of the importation and SMKKMC did not join the importation of rice on August 10, 2012; all the accused are residents of Mapaniqui Candaba Pampanga; the address of the cooperative is in Garlang because the members of the cooperative agreed that the office be established in Garlang, San Ildefonso, Bulacan; they used to conduct their meetings in Garlang, but when their office was destroyed by flood, they transferred their office in Barangay Mapaningui; they informed the CDA about their change of address from Garlang, San Ildefonso, Bulacan to Mapaninqui Candaba, Pampanga; as chairman of the cooperative, his duty is to transact with the NFA to sell to the latter the rice of the members of the cooperative; they did not join the importation of rice like what the other cooperatives do; his co-accused are no longer members of the board of directors because their farm is too far from their place of meeting; every member of the cooperative has to pay the amount of P1,000.00 for the membership fee; they conduct meetings every other month and each member has to pay P50.00 for every meeting; they do not collect fees when there is a calamity; they were encouraged by their co-barangay to form a cooperative because as they observed from other cooperative, they can have more profit when they sell rice to NFA rather than selling rice to the market; they were able to secure a passbook to sell rice to the NFA and they started selling rice to the NFA since 2010.

On November 16, 2016, all accused filed a "Manifestation"[37] stating that they will no longer present additional witnesses and they will now file their "Formal Offer of Evidence."[38]

In the Order dated November 16, 2016, this Court ordered the plaintiff to file its Comment or Opposition to accused's "Formal Offer of Evidence" within ten (10) days from notice. On December 14, 2016, plaintiff filed its "Comments/Objections (Re: Undated Formal Offer of Evidence filed by All of the Accused)". In the Resolution dated January 11, 2017, the Court admitted Exhibits "A-1", "A-2", A-2-a", and "A-3."

During the hearing on April 19, 2017, the plaintiff manifested their intention to recall Atty. Raulito Villar and to present him for rebuttal instead of

[37] Docket, pp. 1152-1153.
[38] Docket, pp. 1154-1158.

presenting the transcript of stenographic notes of the hearing conducted by the Senate Committee on Agriculture as rebuttal evidence. However, on April 25, 2017, the plaintiff filed a "Motion with Manifestation" stating that they will no longer recall Atty. Raulito Villar for rebuttal since the latter is no longer connected with the Bureau of Customs. Hence, plaintiff prayed that it be given a period of thirty (30) days within which to file a Memorandum.

On July 5, 2017, plaintiff filed a "Memorandum."[39] On July 6, 2017, all accused filed through their counsels a "Memorandum."[40]

In the Order dated July 12, 2017,[41] the Court deemed this case submitted for decision.

The Issue

This Court is confronted with this main issue, that is, whether or not accused Maximo Hernandez y Maniego alias Maximo H. Hernandez, Ponciano Hernandez y Buco, Dominador Lalu y Pascual, Felipe Mangilit y Hernandez, Michael Manliclic y Vinuya, Danilo Santos y Sanguyo and Johnrey Retobado y Paglinawan, are guilty of the crime charged and liable to pay the taxes due.

The Arguments

The plaintiff claims that the pieces of evidence presented are sufficient to hold accused liable of the crime of unlawful importation. The cooperative being a juridical entity acted only through the accused who are the duly authorized officers and members of the board of directors pursuant to the Articles of Cooperation and the Amended Articles of Cooperation.

On the other hand, all the accused argue is that the plaintiff failed to prove their allegation of conspiracy and that the plaintiff failed to prove their allegation that all the accused imported or assisted in the importation of 18,000 bags of Vietnamese long grain white rice.

The Applicable Laws

Section 3601 of the TCCP, as amended, provides:

> "**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,

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[39] Docket, pp. 1399-1411.
[40] Docket, pp. 1412-1429.
[41] Docket, pp. 1431.

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 guilty of smuggling and shall be punished with:

1. A fine of not less than fifty pesos nor more than two hundred pesos and imprisonment of not less than five days nor more than twenty days, if the appraised value, to be determined in the manner prescribed under this Code, including duties and taxes, of the article unlawfully imported does not exceed twenty-five pesos;
2. A fine of not less than eight hundred pesos nor more than five thousand pesos and imprisonment of not less than six months and one day nor more than four years, if the appraised value, to be determined in the manner prescribed under this Code, including duties and taxes, of the article unlawfully imported exceeds twenty-five pesos but does not exceed fifty thousand pesos;
3. A fine of not less than six thousand pesos nor more than eight thousand pesos and imprisonment of not less than five years and one day nor more than eight years, if the appraised value, to be determined in the manner prescribed under this Code, including duties and taxes, of the article unlawfully imported is more than fifty thousand pesos but not exceed one hundred fifty thousand pesos;
4. A fine not less than eight thousand pesos nor more than ten thousand pesos and imprisonment of not less than eight years and one day nor more than twelve years, if the appraised value to be determined in the manner prescribed under this Code, including duties and taxes, of the article unlawfully imported exceeds one hundred fifty thousand pesos;
5. The penalty of prison may or shall be imposed when the crime of serious physical injuries shall have been committed and the penalty of reclusion perpetua to death shall be imposed when the crime of homicide shall have been committed by reason or on the occasion of the unlawful importation.

In applying the above scale of penalties, if the offender is an alien and the prescribed penalty is not death, he shall be deported after serving the sentence without further proceedings for deportation. If the offender is a government official or employee, the penalty shall be the maximum as hereinabove prescribed and the offender shall suffer an additional penalty of perpetual disqualification from public office, to vote and to participate in any public election.

When, upon trial for violation of this section, the defendant is shown to have had possession of the article in question, possession shall be deemed sufficient evidence to authorize conviction unless the defendant shall explain the possession to the satisfaction of the court. Provided, however, That payment of the tax due after apprehension shall not constitute a valid defense in any prosecution under this section."

Section 101(k) of the TCCP, as amended by P.D. No. 1464, provides:

"SEC. 101. *Prohibited Importations.*

"The importation into the Philippines of the following articles is prohibited:

(a) Dynamite, gunpowder, ammunitions and other explosives, firearms and weapons of war, and parts thereof, except when authorized by law.
(b) Written or printed articles in any form containing any matter advocating or inciting treason, or rebellion, or insurrection, sedition or subversion against the Government of the Philippines, or forcible resistance to any law of the Philippines, or containing any threat to take the life of, or inflict bodily harm upon any person in the Philippines.
(c) Written or printed articles, negatives or cinematographic film, photographs, engravings, lithographs, objects, paintings, drawings or other representation of an obscene or immortal character.
(d) Articles, instruments or drugs and substances designed, intended or adapted for producing unlawful abortion, or any printed matter which advertises or describes or give directly or indirectly information where, how or by whom unlawful abortion is produced.
(e) Roullette wheels, gambling outfits, loaded dice, marked cards, machines, apparatus or mechanical devices used in gambling or the distribution of money, cigars, cigarettes or other articles when such distribution is dependent on chance, including jackpot and pinball machines or similar contrivances, or parts thereof.
(f) Lottery and sweepstakes tickets except those authorized by the Philippine Government, advertisements thereof, and lists of drawings therein.
(g) Any article manufactured in whole or in part of gold, silver or other precious metals or alloys thereof, the

stamps, brands or marks or which do not indicate the actual fineness of quality of said metals or alloys.

(h) Any adulterated or misbranded articles of food or any adulterated or misbranded drug in violation of the provisions of the "Foods and Drugs Act."

(i) Marijuana, opium, pipes, coca leaves, heroin or any narcotics or synthetic drugs which are or may hereafter be declared habit forming by the President of the Philippines, or any compound, manufactures salt, derivative, or preparation thereof, except when imported by the Government of the Philippines or any person duly authorized by the Dangerous Drugs Board, for medical purposes only.

(j) Opium pipes and parts thereof, of whatever material.

(k) **All other articles and parts thereof, the importation of which prohibited by law or rules and regulations issued by competent authority.** (Emphasis supplied)

With regard to the persons liable, **Article 31 of the Corporation Code of the Philippines** provides:

> Section 31. *Liability of directors, trustees or officers.* - Directors or trustees who wilfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.
>
> When a director, trustee or officer attempts to acquire or acquires, in violation of his duty, any interest adverse to the corporation in respect of any matter which has been reposed in him in confidence, as to which equity imposes a disability upon him to deal in his own behalf, he shall be liable as a trustee for the corporation and must account for the profits which otherwise would have accrued to the corporation.

The Ruling of the Court

Based on the allegations in the Information, the plaintiff must prove that the imported articles were in excess of SMKKMC's rice importation quota allocation balance; that the imported articles were brought without an import permit from the NFA; and that all the accused are the responsible officers of the corporation and in conspiracy with one other in committing the crime charged.

SMKKMC did not secure import permit from the NFA and it exceeded its import quota balance allocation

By virtue of Presidential Decree No. 4,[42] NFA is empowered to establish rules and regulations governing the importation of rice and to license, impose and collect fees and charges for the said importation.

The plaintiff offered in evidence marked as Exhibit "P-12" the "Certification" signed by Joseph Y. Dela Cruz, Assistant Administrator for Marketing Operations, stating that no import permit was issued by the NFA in favor of SMKKMC regarding the subject importation.

The "Certification" reads as follows:

> "This is to certify that SAMAHAN NG MAGSASAKANG KAPAMPANGAN AT KATAGALUGAN MULTI-PURPOSE COOPERATIVE was not issued a Memorandum of Undertaking (MOU), Certification of Official Importation (COI) and Tentative Statement of Account or any import permit by National Food Authority on its importation of 18,000 bags of Vietnamese White Rice which arrived in the Port of Legaspi on September 2, 2012 on board the vessel M/V Minh Tuan 68 under 2012 Private Sector Financed (PSF) Importation thru the NFA Tax Expenditure Subsidy.
>
> This certification is issued by this office as requested by Court of Tax Appeals for whatever legal purpose it may serve.
>
> Given this 1st day of August, 2014.
>
> (Sgd.) **JOSEPH Y. DELA CRUZ**
> Assistant Administrator for
> Marketing Operations"

On the other hand, to prove that SMKKMC exceeded its quota allocation, the plaintiff presented the Memorandum for Fernandino A. Tuazon Director III- CIS signed by Joel C. Pinawin, OIC-CIIS Southern Luzon, marked as Exhibit "P-10" stating that the balance allocation of SMKKMC is 700 MT/14,000 bags. The Memorandum reads as follows:

> "This has reference to the apprehended MV Minh Tuan 68 loaded with 94,000 bags of Vietnamese rice. Warrant of Seizure and Detention with Seizure Identification No. 012012-LEG was issued against the rice shipment for the reason of failure to submit Import Authority legitimizing the importation of the 94,000 bags of Vietnam rice. Upon perusal of the documents covering the importation and based on the Memorandum of

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[42] Section 6, (a) xii, PD No. 4, as amended by PD Nos. 699 and 1485.

Atty. Ramon G. Cuyco, CESO V, Director II Collection Service, it was found that Samahan ng Magsasakang Kapampangan at Katagalugan MPC, Malipampang Concern Citizens MPC, Ugnayang Magbubukid ng San Isidro Inc. and Kapatirang Takusa have already exceeded its Quota given by the National Food Authority (NFA), as per attached Memorandum re: Balance of NFA Rice Quota Allocation under the Private Sector Financed (PSF) Importation Allocated to each Farmer's Organization/Cooperative for the Year 2012 dated September 12, 2012. (Pls. See attached)

Cooperative	Allocation Balance	Per Manifest
Samahan ng Magsasakang Kapampangan at Katagalugan	700MT/14,000bags	18,000 bags
Malipampang Concern Citizens MPC	345MT/6,900	18,000 bags
Ugnayang Magbubukid ng San Isidro, Inc.	340MT/6,800	21,000 bags
Kapatirang Takusa	950MT/19,000 bags	21,000 bags

Based on the foregoing, the failure on the part of SMKKMC to secure from the NFA the import permit for its rice shipments clearly shows that the said importation is contrary to law. Hence, the plaintiff was able to prove that there is unlawful importation of rice. The evidence of the prosecution satisfactorily prove the allegation in the Information that accused did not possess the legal authority to import the 18,000 bags of rice.

Whether all the accused are the responsible officers of the corporation

A corporation is an artificial entity created by operation of law. It has a personality separate and distinct from that of its stockholders and from that of other corporations to which it may be connected.[43] The penal liability for violation of the provisions under the TCCP is pinned upon the responsible officers of the corporation, who wilfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons. Corporations can act only through its officers.

It appears in the Referral for Preliminary Investigation signed by Commissioner Rozzano Rufino B. Biazon and in the complaint affidavit of Atty. Raulito A. Villar that accused Maximo Hernandez y Maniego alias Maximo H. Hernandez, Ponciano Hernandez y Buco, Dominador Lalu y Pascual, Felipe Mangilit y Hernandez, Michael Manliclic y Vinuya, Danilo Santos y Sanguyo and Johnrey Retobado y Paglinawan are the members of the Board of Directors of the cooperative.

[43] Philippine National Bank vs. Hydro Resources Contractors Corporation, G.R. No. 167530, March 13, 2013.

However, accused Ponciano Hernandez y Buco, Dominador Lalu y Pascual, Felipe Mangilit y Hernandez, Michael Manliclic y Vinuya, Danilo Santos y Sanguyo denied their involvement in the commission of the crime arguing that at the time the alleged crime was committed, they are no longer members of the Board of Directors of SMKKMC. They invoke the following provisions of their Amended Articles of Cooperation dated June 12, 2011 and Amended By-Laws.

Section 25, Article IV of the Amended By-Laws of SMKKMC provides:

> "**Qualifications.** No member shall be elected or to continue as such member of the Board of Directors unless he is a member entitled to vote and has the following qualifications:
>
> a) Has paid the minimum capital requirement
> b) Have continuously patronized the cooperative services
> c) A member in good standing for the last two years
> d) Completed or willingness to complete the required education and training as may be provided by law, rules and regulations and policy approved by the general assembly
> e) Of good moral character and other qualifications prescribed in the IRR."

On the other hand, the applicable provisions of the Amended Articles of Cooperation of SMKKMC states:

"ARTICLE VIII
BOARD OF DIRECTORS

That the number of Directors of this Cooperative shall be Seven (7) and the name, citizenship and residences of the founding directors who are to serve until their successors shall have been elected and qualified as provided in the by-laws are:

That the names, and completed address of the co-operators are as follows:

NAME	NATIONALITY	POSTAL ADDRESS
1. Maximo M. Hernandez	Filipino	Garlang, San Ildefonso, Bul.
2. Johnrey P. Retobado	Filipino	Garlang, San Ildefonso, Bul.
3. Ponciano B. Hernandez	Filipino	Garlang, San Ildefonso, Bul.
4. Dominador P. Lalu	Filipino	Garlang, San Ildefonso, Bul.
5. Felipe H. Mangilit	Filipino	Garlang, San Ildefonso, Bul.
6. Michael V. Manliclic	Filipino	Garlang, San Ildefonso, Bul.
7. Danilo S. Santos	Filipino	Garlang, San Ildefonso, Bul."

"ARTICLE X
CAPITALIZATION

That the Authorized Share Capital of this Cooperative is **Five Hundred Twenty Eight Thousand Pesos (P 528,000.00),** Philippine currency, divided into: **Five Thousand Two Hundred Eighty (5,280)** common shares with a par value **ONE HUNDRED PESOS (Php 100)** per share."

"ARTICLE X
SUBSCRIBED AND PAID UP SHARE CAPITAL

That the authorized share capital which has been actually subscribed is One Hundred Thirty Two Thousand Pesos (P 132,000.00) and the amount paid on such subscription is Thirty Three Thousand Pesos (P 33,000.00) and that the following members have subscribed and paid for the number of shares and amount of share capital set out after their respective names:

Common Share Capital Subscribers

Name	No. of Subs. Shares	Amount of Subs. Shares	No. of Paid-up Shares	Amt. of Paid-up Shares
1. Efren Cruz	40	4,000	10	1,000
2. Oscar Caliwag	40	4,000	10	1,000
3. Tomas Nuñez	40	4,000	10	1,000
4. Ernesto Laxamana	40	4,000	10	1,000
5. Renato Samaniego	40	4,000	10	1,000
6. Marina Nuñez	40	4,000	10	1,000
7. Allan Mangunay	40	4,000	10	1,000
8. Rufino Alonzo	40	4,000	10	1,000
9. Rolando Rodriguez	40	4,000	10	1,000
10. Renato Alonzo	40	4,000	10	1,000
11. Harold Chavenia	40	4,000	10	1,000
12. Ricardo Etinoza	40	4,000	10	1,000
13. Joey De Leon	40	4,000	10	1,000
14. Anthony Caliwag	40	4,000	10	1,000
15. Abelardo Buco	40	4,000	10	1,000
16. Carlos Hernandez	40	4,000	10	1,000
17. Ruferto Hernandez	40	4,000	10	1,000
18. Bernardo Soliman	40	4,000	10	1,000
19. Romeo Manaslastas	40	4,000	10	1,000
20. Aristotle Briones	40	4,000	10	1,000
21. Adolf Aga	40	4,000	10	1,000
22. Marites Sagum	40	4,000	10	1,000
23. Myrna Sagum	40	4,000	10	1,000
24. John Rey Retobado	40	4,000	10	1,000
25. Edgardo Hernandez	40	4,000	10	1,000
26. Renato Hernandez	40	4,000	10	1,000
27. Abelardo Hernandez	40	4,000	10	1,000
28. Lydia Sanchez	40	4,000	10	1,000
29. Romeo Sanchez	40	4,000	10	1,000
30. Delia Hernandez	40	4,000	10	1,000
31. Felicidad Hernandez	40	4,000	10	1,000
32. Catalino Serrano	40	4,000	10	1,000
33. Maximo Hernandez	40	4,000	10	1,000
TOTAL	**1,320**	**132,000**	**330**	**33,000"**

A perusal of provisions of the Amended Articles of Cooperation which the plaintiff presented as evidence (Exhibit "P-13") shows that the names of accused Ponciano Hernandez y Buco, Dominador Lalu y Pascual, Felipe Mangilit y Hernandez, Michael Manliclic y Vinuya, Danilo Santos y Sanguyo are listed in the Board of Directors of SMKKMC. In the Amended By-Laws which was also presented by the plaintiff as evidence (Exhibit "P-14") that to be a member of the Board of Directors, one must have paid the minimum capital requirement. A perusal of the names of those who paid the capital requirement shows that accused Ponciano Hernandez y Buco, Dominador Lalu y Pascual, Felipe Mangilit y Hernandez, Michael Manliclic y Vinuya, Danilo Santos y Sanguyo did not pay the minimum capital requirement. Hence, by implication, the said accused cannot be considered members of the Board of Directors of SMKKMC at the time of the commission of the crime in 2012 even if their names appear as members of the Board of Directors in the Amended Articles of Cooperation dated June 12, 2011.

Therefore, the only remaining accused are Maximo Hernandez and Johnrey Retobado.

Allegation of Conspiracy as a means of committing violations of Sections 3601 and 101(k) of the TCCP must be duly proven

There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. It arises on the very instant the plotters agree, expressly or impliedly, to commit the felony and forthwith decide to pursue it. It may be proved by direct or circumstantial evidence.

Direct proof of conspiracy is rarely found; circumstantial evidence is often resorted to in order to prove its existence. Absent any direct proof, as in the present case, conspiracy may be deduced from the mode, method, and manner the offense was perpetrated, or inferred from the acts of the accused themselves, when such acts point to a joint purpose and design, concerted action, and community of interest. An accused participates as a conspirator if he or she has 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. Stated otherwise, it is not essential that there be proof of the previous agreement and decision to commit the crime; it is sufficient that the malefactors acted in concert pursuant to the same objective.[44]

[44] People vs. Amodia, 602 Phil. 889 (2009), cited in the case of Mark Renald Marasigan y de Guzman vs. Reginald Fuentes Alias "Regie," et al. G.R. No. 201310, January 11, 2016.

To prove their case, the prosecution presented in evidence the testimonies of Leovigoldo M. Dayoja, Atty. Raulito A. Villar, Dennis Barona, Joel Pinawin and Divina B. Garido and the documentary exhibits identified by the witnesses during their direct examinations. However, from the totality of the evidence presented, this Court finds that the plaintiff was not able to prove conspiracy in this case. While it is true that the plaintiff's witnesses identified in the Bill of Lading, Inward Foreign Manifest, Load Port Survey Report, showing the name of the SMKKMC, the Court cannot, however consider the same as evidence of participation of accused Maximo Hernandez and Johnrey Retobado in committing the crime charged. It cannot be inferred from the said documents that the said accused participated and consented in the importation of the subject shipments. There is no proof either in the testimonial or in the documentary evidence presented by the plaintiff showing both accused, Maximo Hernandez and Johnrey Retobado as conspirators, had performed some overt act, direct or indirect contribution to the execution of the crime charged. There is no proof that there was a conscious design attributable to them to their participation in the importation of the 18,000 bags of Vietnamese long grain white rice with knowledge that the said shipment was imported without the requisite import authority from the NFA.

Pertaining to accused Maximo Hernandez, the only evidence pointing him as the Chairman of SMKKMC is the letter requesting for a change of port of discharge which was marked as Exhibit "P-9" for the plaintiff. However, a re-examination of the records shows that said exhibit was not identified by any of the plaintiff's witnesses. Although the said exhibit was offered and admitted by the Court, the same does not have any probative value. This piece of evidence cannot be made a basis that Maximo Hernandez signed the same.

Concerning accused Johnrey Retobado, there was no direct evidence naming him as the one responsible for the illegal importation. The fact that his name appeared in the Board of Directors in the Articles of Cooperation, in the Amended Articles of Cooperation and had paid the subscribed share capital, does not make him answerable to the crime charged. This fact, absent any other evidence, is not sufficient to find Johnrey Retobado as a conspirator.

CONCLUSION

In criminal cases, the burden is on the prosecution to prove, beyond reasonable doubt, the essential elements of the offense with which the accused is charged; and if the proof fails to establish any of the essential elements necessary to constitute a crime, the accused is entitled to acquittal. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding the possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. At best, the evidence proffered by the prosecution only goes so far to create a suspicion that accused probably perpetrated the crime charged. But suspicion alone is insufficient, the required quantum of evidence being proof beyond reasonable doubt. When the People's evidence fail to indubitably prove the accused's authorship of the crime of which he stands accused; then it is the Court's duty, and the right of the accused, to proclaim his innocence.[45]

In fine, there is reasonable doubt as to the guilt of all the accused. Where there is reasonable doubt, an accused must be acquitted even though his innocence may not have been fully established. When guilt is not proven with moral certainty, exoneration must be granted as a matter of right.[46]

WHEREFORE, premises considered, this case is **DISMISSED** for failure of the prosecution to prove beyond reasonable doubt the guilt of all the accused. Therefore, accused **Maximo Hernandez y Maniego alias Maximo H. Hernandez, Ponciano Hernandez y Buco, Dominador Lalu y Pascual, Felipe Mangilit y Hernandez, Michael Manliclic y Vinuya, Danilo Santos y Sanguyo and Johnrey Retobado y Paglinawan** are **ACQUITTED** of the crime charged.

SO ORDERED.

Ma. Belen R. L.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[45] *Darwin vs. Court of Appeals, et al.,* G.R. No. 125044, July 13, 1998.
[46] Violeta Balihadad vs. People, G.R. No. 185195, March 17, 2010, citing, [Monteverde vs. People, G.R. No. 139610, August 12, 2002, 387 SCRA 196, 215.]

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.

LOVELL R. BAUTISTA
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.

ROMAN G. DEL ROSARIO
Presiding Justice