

ANGEL O. RODRIGUEZ, EULOGIO O. RODRIGUEZ, JOSE O. RODRIGUEZ, AND TOMAS NGO, PETITIONERS, VS. THE HON. COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 115218. September 18, 1995

Ponente: PUNO, J.

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PUNO, J.:

This is a petition to review the Decision dated February 28, 1990 and the Resolution dated November 9, 1993 of respondent Court of Appeals in CA-G.R. CR No. 06220.

In an information dated October 11, 1985, petitioners Angel O. Rodriguez, Eulogio O. Rodriguez, Jose O. Rodriguez and Tomas Ngo, together with Manuel S. Pena and Alfredo Fiesta were charged with a violation of Section 3602 in relation to Section 3601 of the Tariff and Customs Code of the Philippines committed as follows:

"That on or about September 12, 1983, in the City of Manila, Philippines, the said accused, conspiring and confederating together and helping one another, with evident intent to defraud the Government of the Republic of the Philippines of the legitimate taxes and duties accruing to it from merchandise imported into this country, did then and there wilfully and unlawfully, by means of fraudulent practice, that is, by presenting a fake and false Special Permit to Transfer (MICP) No. 01703 with Serial No. 150387 covering a 40-footer container (BENU-2899509) containing 100% cotton dyed fabric consigned to Inter-Fashion, Inc., attempt and/or made an attempt to make an entry of said articles in the manner above set forth, they knowing fully well that the said goods have not been properly declared and the duties thereon have not been paid to the corresponding proper authorities, in violation of said Section 3602 in relation to Section 3601 of the Tariff and Customs Code of the Philippines."[1]

Accused Manuel S. Pena died before the information was filed in court while accused Alfredo Fiesta was at large. Only Tomas Ngo and the brothers Angel, Eulogio and Jose Rodriguez appeared and were tried before the trial court.

The prosecution established that on September 9, 1983, the vessel S/S Neptune Agate arrived at the Manila International Port from Hongkong carrying, among others, one 40-foot container van containing 29,000 kilos consisting of 44,885,015 yards of 100% cotton-dyed fabric. The fabric had a home consumption value of U.S.\$93,809.68 and a dutiable value of P1,032,047.10 and was consigned to "Philippine Inter-Fashion, Inc., 5th Floor, Vernida I Condominium, Amorsolo St., Legaspi Village, Makati, Metro Manila," a domestic corporation engaged in the manufacture of garments for export.[2]

Meanwhile, one Ernesto M. Ereno, Import-Export Manager of the EME Customs Brokerage, Inc., filed with the Bureau of Customs Special Permit to Transfer No. 1703 with Serial No. 150387[3] seeking to transfer the said container van from the Manila International Container Port to Customs Bonded Warehouse No. 725 of the Philippine Inter-fashion, Inc. at Bagong Bayan, Dasmarinas, Cavite. The permit appeared to have been approved and signed by the proper Customs authorities on the basis of which a gate pass was issued by the Customs

wharfinger for the release of said container. At 5:00 P.M. of September 12, 1983, the container was loaded on a truck and in accordance with Customs rules, escorted by Customs guard accused Alfredo Fiesta, until its receipt at the Customs Bonded Warehouse at Dasmarinas, Cavite.[4] Once outside the Customs zone, the truck did not proceed to Cavite but went to Quezon City to the White Plains Subdivision thereat.

The truck entered the said subdivision towards the direction of Interior 56 Queensville Compound, accused Manuel Pena's residence. The vehicle was maneuvering inside when it hit the perimeter wall at the other end of the subdivision, causing it to stop. Forthwith, Manuel Pena informed his son-in-law, Eulogio Rodriguez, who lived in the same compound, to remove the cargo from the stalled vehicle and transfer the same to their compound. Eulogio acceded to this request and finished transferring the cargo after midnight.[5]

The following morning, September 13, 1983, Eulogio called his brothers, Angel and Jose Rodriguez, to help him transport the textile from White Plains to Paranaque, Metro Manila. They came over and were able to deliver some eighty (80) rolls of the textile to No. 25 9th Street, United Paranaque Subdivision, the residence of their co-petitioner Tomas Ngo. They made another delivery in the afternoon of the same day.[6]

The next day, September 13, 1983, at around 1:30 P.M., Jose and Angel were on their way to make a third delivery when they were intercepted by agents of the Customs Intelligence and Investigation Division.

Earlier, Colonel Guillermo Parayno, Jr., then Chief of the Customs Intelligence and Investigation Division, noticed that the container van consigned to the Philippine Inter-Fashion, Inc., was missing from the container yard. On inquiry, the President of the said company denied ordering any shipment from abroad and claimed that they were not expecting any such cargo. Immediately, Colonel Parayno formed teams to trace the movement of the container and finally located it at the White Plains Subdivision in Quezon City.

One team of agents was on its way to the said subdivision when their attention was called to the delivery van along White Plains Avenue. The team chased the van and ordered the driver to stop. The van stopped and the agents found the two petitioners, Angel and Jose Rodriguez, one driver and one helper. They opened the door of the van and found it full of textile which, according to the driver and helper, came from the residence of Manuel Pena at the White Plains Subdivision. They disclosed that they were taking their cargo to No. 25 9th Street, Paranaque.[7]

The team proceeded to Manuel Pena's residence where Colonel Parayno informed Pena that they were going to search his house for the textile. Pena denied possessing or keeping any textile and invited Colonel Parayno and his men inside his house. The Customs agents looked around and found behind Pena's house a structure that appeared to be a stock room.[8] They opened the room and found nothing. They noticed another room behind, opened it and found it full of the same textile as those they saw in the delivery van.[9]

Mr. Pena informed the agents that the stock room belonged to Eulogio who also owned the house behind it. Pena likewise claimed that the textile belonged to a certain "Rolly" whose truck happened to hit the subdivision wall near his (Mr. Pena's) house and that the textile was being stored in his compound until delivery to its final destination at Paranaque.[10]

The next day, September 15, 1983, the Customs agents were armed with a search warrant and went to Tomas Ngo's residence in Paranaque. They discovered in his bodega several rolls of the same textile they found in the delivery van and in Pena's compound.[11]

The agents seized all the textile they found in the delivery van, in Pena's compound and in Tomas Ngo's residence. They conducted an investigation and discovered that the container van did not belong to the consignee and that it was released from the container port by virtue of a Special Permit to Transfer in which all signatures of

the approving Customs personnel, except for one, were forged.

For their defense, the Rodriguez brothers sought to establish the fact that the textile belonged to one "Rolly" who asked Manuel Pena for help to transport it after his truck met an accident near Mr. Pena's residence. Eulogio claimed that Mr. Pena in turn asked him to transfer the textile from the stalled truck and keep them safe in his servants' quarters.[12] Rolly returned the following morning and again requested him, through Manuel Pena, to transport the textile to Paranaque for a consideration of P4,000.00. Eulogio agreed because his father-in-law must have wanted him to earn extra money.[13] He however was not feeling very well, so he called up his brother, Jose, and requested him to deliver the cargo to Paranaque.[14] Their other brother, Angel, happened to be in Jose's house and so they proceeded to White Plains and with some of their helpers loaded some textile into one of Manuel Pena's delivery vans. They followed Rolly, who was in his car, to the residence of Tomas Ngo in Paranaque. Tomas Ngo met them and the cargo was unloaded in his house. The brother and their helpers returned to White Plains without Rolly and made another delivery in the afternoon. They were on their way to make a third delivery the following day when they were intercepted by the Customs agents.

Tomas Ngo, for his defense, claimed that he merely purchased the textile from Rolly who offered 30,000 yards to him in Divisoria on September 12, 1983. Rolly allegedly assured him that he got the textile from an auction sale at the Bureau of Customs and that all customs duties and taxes thereon had already been paid.[15]

The trial court rendered a decision on September 28, 1988 finding the accused guilty of the crime as charged and sentencing them as follows:

"WHEREFORE, the Court finds the accused Eulogio O. Rodriguez, Angel Rodriguez, Jose Rodriguez and Tomas Ngo guilty beyond reasonable doubt of a violation of Sections 3601 and 3602 of the Tariff and Customs Code of the Philippines and accordingly sentences each of them to pay a fine of P8,000.00 and to suffer imprisonment for an indeterminate period of eight (8) years and one (1) day, as minimum, to twelve (12) years, as maximum, and to pay proportionate costs, de oficio.

The court dismisses the case as against accused Manuel S. Pena who had died even before the filing of the information.

The case as against accused Alfredo Fiesta is ordered archived until his arrest.

SO ORDERED.[16]

On appeal, the decision was affirmed by the Court of Appeals on February 28, 1990[17] and in a resolution dated November 9, 1993, denying petitioner's motion for reconsideration.[18]

Hence, this petition where it is contended:

"I

THE LOWER COURT ERRED IN CONVICTING ACCUSED-APPELLANTS EULOGIO O. RODRIGUEZ, ANGEL O. RODRIGUEZ AND JOSE O. RODRIGUEZ, BECAUSE THEY WERE MERELY INNOCENT SUBSTITUTE TRUCKERS OF THE TEXTILE GOODS.

II

THE LOWER COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT TOMAS NGO, BECAUSE HE WAS MERELY AN INNOCENT PROSPECTIVE BUYER OF THE TEXTILE GOODS, WHICH PURCHASE DID NOT EVEN MATERIALIZE.

III

THE LOWER COURT ERRED IN CONVICTING THE ACCUSED OF THE CRIME CHARGED, BECAUSE THE ALLEGED FAKE SPECIAL PERMIT TO TRANSFER APPEARED GENUINE."

Petitioners were charged in the information with a violation of Sections 3601 and 3602 of the Tariff and Customs Code which provide:

"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 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 does not exceed one hundred fifty thousand pesos.
4. A fine of 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 prision mayor 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.

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 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." (Italics supplied)

Under Section 3601 of the Tariff and Customs Code, smuggling is committed by any person who: (1) fraudulently imports or brings into the Philippines or assists in importing or bringing into the Philippines any article, contrary to law; or (2) 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. Importation begins when the carrying vessel or aircraft enters the jurisdiction of the Philippines with intention to unload and is deemed terminated upon payment of the duties, taxes and other charges due upon the articles and the legal permit for withdrawal shall have been granted. If the articles are free of duties, taxes and other charges, importation is terminated until the articles shall have legally left the jurisdiction of the customs.[19]

After importation, the act of facilitating the transportation, concealment or sale of the unlawfully imported article must be with the knowledge that the article was smuggled. However, if upon trial the defendant is found to have been in possession of such article, this shall be sufficient to authorize conviction unless the defendant explains his possession to the satisfaction of the court.[20]

Section 3602 of the Code enumerates the various fraudulent practices against customs revenue such as the entry of imported or exported articles by means of any false or fraudulent invoice, statement or practice; the entry of goods at less than the true weight or measure; or the filing of any false or fraudulent entry for the payment of drawback or refund of duties. The term "entry" in Customs law has a triple meaning. It means (1) the documents filed at the Customs house; (2) the submission and acceptance of the documents; and (3) the procedure of passing goods through the Customs house.[21]

In the instant case, the textile from the Manila International Container Port was passed through the Customs house and released by means of the Special Permit to Transfer purportedly accomplished and signed by the authorized Customs personnel. The permit form was genuine but all the signatures thereon, except for one, were forged. The trial court found that the one genuine signature of Deputy Collector of Customs Juan P. Calabig was affixed on the belief that the permit had been regularly signed by the other authorized personnel.[22] The fraudulent entry of the textile makes it fall under Section 3602 of the Tariff and Customs Code. The receipt, concealment, sale, purchase or the facilitation thereof after the unlawful importation with the knowledge that the textile is smuggled becomes punishable under Section 3601 of the Code.

Petitioners do not dispute the appellate court's finding that the textile was imported and that it passed through the Customs house under fraudulent circumstances.[23] They, however, claim that it erred in convicting them when, by its own finding, petitioners had no actual participation in the release of said textile and the diversion of the container van to Quezon City.[24]

While it is true that the evidence does not show their participation in the release of the smuggled cargo, petitioners were actually found to have been in possession of the textile after its release. Some of the textile materials were found in Eulogio's stock room and in Tomas Ngo's bodega and the others in the delivery van where Jose and Angel were riding. Petitioners have never disputed but in fact admitted their possession of the textile and as a result of this admission, they are presumed to have been engaged in smuggling pursuant to the last paragraph of Section 3601 of the Code. The burden of proof shifted to them. To rebut this presumption, it is not enough for petitioners to claim good faith and lack of knowledge of the unlawful source of the textile. Petitioners should have presented evidence to support their claim and satisfy the court of their non-complicity.

Petitioners failed to sufficiently explain how they came into possession of the smuggled textile. They ascribe all their acts to Mr. Pena who has long since died and to Rolly who has since disappeared, if he ever existed. The testimony of a witness as to what he heard other persons say about certain facts in dispute is hearsay evidence and cannot be admitted.[25] Moreover, petitioners' version of their participation is self-serving, strains the imagination and taxes our credulity.

On the contrary, the evidence shows that the truck carrying the container van with the textile left the container port for Mr. Pena's residence at White Plains, Quezon City. The truck was allowed to enter the private subdivision because Mr. Pena was a registered homeowner and he sought permission for it to go to his house.[26] Clearly, the truck and its cargo did not just happen to pass through White Plains. The container was actually intended for delivery at Mr. Pena's compound. Mr. Pena was said to have been engaged in the trucking business[27] but he passed on the job of transporting the cargo to Eulogio who in turn passed it on to his brothers, Jose and Angel. It is difficult to comprehend why the Rodriguez brothers went out of their way to help Rolly whom they never knew when Mr. Pena provided the delivery van and Rolly himself had some helpers to load and unload the cargo. The three brothers were businessmen. Eulogio and Angel were engaged in general merchandise and had their own stores at the Zaragosa Shopping Center, Zaragosa Street, Tondo, Manila.[28] Eulogio said that Mr. Pena gave him the job because he wanted him to earn extra money. This claim is made incredible by the fact that the brothers were to transport the textile for a fee of P4,000.00. If they needed the extra money, they never bothered to ask for it or any portion thereof from Rolly or Mr. Pena. Rolly did not return to White Plains after the first delivery[29] but Jose and Angel continued to work and even intended to finish the job without exerting any effort to ensure payment therefor.

Tomas Ngo's claim that he never knew of the textile's illegal origin cannot likewise be given credence. Tomas Ngo testified that he asked Rolly if the taxes on the textile had been paid, and that Rolly answered in the affirmative and in fact assured him that he would present the tax receipts later.[30] After the first delivery, Rolly said that he needed the receipts to show the authorities during the delivery.[31] And yet Tomas Ngo, who was engaged in the buy and sell business of plastic materials and textile, never bothered to check or glance at these tax receipts.[32] Rolly disappeared without leaving any receipts with Jose and Angel and neither did the brothers ask for said receipts.

Indeed, petitioners' claim of good faith and lack of knowledge of the origin of the textile cannot stand in the light of contrary evidence. As the lower courts well found, petitioners have miserably failed to rebut the presumption that they were engaged in smuggling at the time they were apprehended. Evidence, to be believed, must proceed not only from the mouth of a credible witness but must be credible in itself as when it conforms to the common experience and observation of mankind.[33]

IN VIEW WHEREOF, the petition is DENIED and the Decision dated February 28, 1990 and the Resolution dated November 9, 1993 of the Court of Appeals in CA-G.R. CR No. 06220 are hereby affirmed. Costs against petitioners.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, Mendoza, and Francisco, JJ., concur.

[1] Records, p. 1.

[2] Id., pp. 248, 249, Exhibit A.

- [3] *Id.*, p. 248, Exhibit A.
- [4] TSN of April 25, 1986, pp. 13-15; TSN of November 26, 1986, pp. 16-17; Records, p. 250, Exhibit B.
- [5] TSN of March 9, 1988, p. 10.
- [6] TSN of March 9, 1988, p. 49; TSN of April 13, 1988, p. 27; TSN of May 13, 1988, p. 43.
- [7] TSN of September 15, 1986, pp. 13-14.
- [8] TSN of May 26, 1986, p. 63.
- [9] *Id.*, pp. 63-64.
- [10] TSN of July 28, 1986, pp. 3-4; Records, pp. 256-257, Exhibit F.
- [11] TSN of September 15, 1986, pp. 14-15.
- [12] TSN of March 9, 1988, pp. 6-7, 9-10.
- [13] *Id.*, p. 8.
- [14] *Id.*, p. 11.
- [15] TSN of May 13, 1988, p. 40.
- [16] *Id.*, p. 270.
- [17] Rollo, pp. 29-41.
- [18] Rollo, pp. 43-44.
- [19] Tariff and Customs Code, Section 1202; *Llamado v. Commissioner of Customs*, 122 SCRA 118 [1983].
- [20] *Ramos, Jr. v. Pamaran*, 60 SCRA 327 [1974].
- [21] Tariff and Customs Code, Section 1201; IV Tejam, *Commentaries on the Revised Tariff and Customs Code* 2230 [1987].
- [22] Records, p. 250, Exhibit B.
- [23] Rollo, p. 156; Reply to Comment, p. 1.
- [24] Rollo, pp. 16-22; Petition, pp. 8-14.
- [25] *San Sebastian College v. Court of Appeals*, 197 SCRA 138 [1991]; *People v. Tiozon*, 198 SCRA 368 [1991].
- [26] Records, TSN of May 26, 1986, p. 57.
- [27] TSN of March 9, 1988, pp. 28-29, 51.
- [28] TSN of March 9, 1988, pp. 3, 40; TSN of April 13, 1988, p. 4.
- [29] TSN of March 9, 1988, p. 36.
- [30] TSN of May 13, 1988, pp. 40-42.
- [31] *Id.*, p. 44.
- [32] *Id.*, pp. 36-37.

[33] *People v. Jalon*, 215 SCRA 680 [1992]; *Magat v. People*, 201 SCRA 21 [1991]; *People v. Marti*, 193 SCRA 57 [1991].

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