RODOLFO TIGOY, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. NO. 144640. June 26, 2006

Ponente: AZCUNA, J.

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AZCUNA, J.:

This is a petition for review under Rule 45 of the Rules of Court assailing the decision and resolution, dated March 6, 2000 and August 23, 2000, respectively, of the Court of Appeals in CA-G.R. CR No. 20864 entitled "People of the Philippines v. Nestor Ong and Rodolfo Tigoy," acquitting Nestor Ong for insufficiency of evidence, while convicting Rodolfo Tigoy for violating Section 68 of Presidential Decree (P.D.) No. 705 or the Revised Forestry Code of the Philippines, as amended by Executive Order (E.O.) No. 277, Series of 1987, in relation to Articles 309 and 310 of the Revised Penal Code.

The facts of the case are as follows:

On August 3, 1993, Nestor Ong, who had been engaged in the trucking business in Iligan City since 1986, was allegedly introduced by his friend Gamad Muntod to Lolong Bertodazo who signified his intent to rent the trucks of Ong to transport construction materials from Larapan, Lanao del Norte to Dipolog City. A Contract to Transport was supposedly entered into between Ong and Bertodazo, the salient portions of which state:

> - That the party of the First Part is an owner of Cargo Trucks with place of business at Iligan City;
>
> - That the party of the Second Part is a businessman dealing in buy and sell of General Merchandise, dry goods and construction materials;
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> - That the party of the Second Part will engage the services of the two (2) cargo trucks of the party of the First Part;
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> - That the services agreed upon should be rendered by the party of the First Part on August 3, 1993 from Larapan, Linamon, Lanao del Norte to Dipolog City for an agreed amount of TEN THOUSAND (P10,000.00) Pesos per truck or a total of TWENTY THOUSAND (P20,000.00) Pesos, Philippine Currency for the carriage of cement and other merchandise owned by the party of the Second Part;
>
> - That any legal controversy involving the cargo or of and when the cargo trucks are not actually used for the purpose herein stipulated, it is agreed that the same is the sole responsibility of the party of the Second Part without any liability of the party of the First Part.[1]

In the evening of October 3, 1993, Ong allegedly ordered Nestor Sumagang and petitioner Rodolfo Tigoy who had been employed by him as truck drivers for two (2) years and ten (10) years, respectively, to bring the two trucks to Lolong Bertodazo in Larapan, Lanao del Norte which is about fifteen (15) minutes away from Iligan City. He instructed the two drivers to leave the trucks in Larapan for the loading of the construction materials by Lolong Bertodazo, and to go back at dawn for the trip to Dipolog City. Thus, after meeting with Bertodazo, Sumagang and petitioner Tigoy allegedly went home to return to Larapan at four o'clock in the morning the next

day. When they arrived, the trucks had been laden with bags of cement and were half-covered with canvas.[2] Before departing, they allegedly checked the motor oil, water, engine and tires of the trucks to determine if the same were in good condition.

That same morning of October 4, 1993, Senior Inspector Rico Lacay Tome (then Deputy Chief of Police of Ozamis City), while escorting Provincial Director Dionisio Coloma at the ICC Arts Center in Ozamis City, along with the members of the Special Operation Group, received a dispatch from the 466th PNP Company situated at Barangay Bongbong, Ozamis City, informing him that two trucks, a blue and green loaded with cement, that were going towards Ozamis City did not stop at the checkpoint. Upon receiving the report, Tome, along with PO2 Peter Paul Nuqui and PO3 Bienvenido Real, boarded their patrol vehicle, a mini cruiser jeep, to intercept the two trucks at Lilian Terminal, Ozamis City.[3]

At the Lilian Terminal, PO2 Nuqui, who was the only one in uniform among the police officers, flagged down the two trucks but the same just sped away and proceeded towards the direction of Oroquieta City. Aboard their patrol vehicle, they chased the trucks and overtook the same at Barangay Manabay. They blocked the road with their vehicle causing the two trucks to stop.

According to Senior Inspector Tome, he asked the driver who had alighted from the green truck why he did not stop at the checkpoint but the latter did not answer. When he inquired what was loaded in the truck, the driver replied that there is "S.O.P," which means grease money in street parlance.[4] This raised the suspicion of Tome that the trucks were loaded with "hot items."

Meanwhile, the blue truck which had been speeding behind the green truck and was being driven by Sumagang was intercepted by PO3 Real. Upon inspection, the police officers discovered piles of sawn lumber beneath the cement bags in both trucks. Tome inquired if the drivers had a permit for the lumber but the latter could not produce any.

The drivers were brought and turned over to the investigator at the City Hall in Ozamis City. The truckmen, namely, Felix Arante and Doro Lopez, and another passenger whom Tigoy identified as Lolong Bertodazo, who were riding with them in the trucks, were not investigated. According to Nuqui, they did not notice that the group had left. It was later learned that they were instructed by Sumagang to inform Nestor Ong of the incident.

Afterwards, the group of Tome proceeded back to the ICC Arts Center and informed the Provincial Director of the apprehension. Meanwhile, the drivers, Tigoy and Sumagang, were detained at the Ozamis City Police Station while Arante and Lopez were released.[5]

Meanwhile, Ermelo delos Santos, Chief of the Department of Environment and Natural Resources – Community and Environment and Natural Resources Office (DENR-CENRO),[6] after receiving a call from the Ozamis City Police Station that two trucks were apprehended transporting sawn lumber without a permit and were brought to the City Hall, sent Rolando Dingal, Forester of the DENR, together with Teodoro Echavez, Juanito Taruc and Lucio Penaroya, to investigate.

Petitioner Tigoy and Sumagang presented to Dingal the registration papers of the two trucks and appearing therein was the name of Nestor Ong as the owner. After ascertaining that the sawn lumber loaded on the two trucks did not have supporting documents, Dingal and his companions scaled the subject lumber and prepared a tally sheet. Loaded in the blue Nissan ten-wheeler truck were 229 pieces of lumber with a total volume of 6,232.46 board feet; and, in the green Isuzu eight-wheeler truck, 333 pieces of lumber with a total volume of 5,095.5 board feet.[7] Consequently, the lumber and the vehicles were seized upon the order of the DENR Regional Executive Director.[8]

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On October 6, 1993, an Information was filed against Nestor Ong, Sumagang, Lolong Bertodazo and petitioner Tigoy for possession of forest products without legal permit, thus:

> That on or about the 4[th] day of August, 1993 at Barangay Catadman, Ozamiz City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping each other, for a common design, did then and there willfully, unlawfully, feloniously and illegally possess and transport without the necessary legal documents nor permit from the lawful authorities, sawn dipterocarp lumbers (Philippine Mahogany), in the following manner, to wit: accused Nestor Ong, being the owner of 2 ten wheeler trucks with Plate Nos. GDA-279 and PNH-364 facilitated and allowed the use and transport of above-stated sawn [lumber] from Larapan, Lanao del Norte, but intercepted by the PNP authorities in Ozamiz City; while the accused Lolong Bertodazo facilitated the loading and transport of said sawn lumbers, while accused Nestor Sumagang y Lacson drove the Nissan 10 wheeler cargo truck bearing Plate No. GDA-279 which was loaded with 333 pieces of said sawn dipterocarp lumbers (Philippine Mahogany) of assorted sizes equivalent [to] 5,095.5 board feet which was concealed under piled bags of cement, which lumbers [were] valued at P134, 242.36; while accused Rodolfo Tigoy drove the 8 wheeler Isuzu truck bearing Plate No. ONH-364, which was loaded and transported with 229 pieces of sawn dipterocarp lumbers (Philippine Mahogany) of assorted sizes equivalent to 6,232.46 board feet which was concealed under piled bags of cement which lumbers [were] valued at P92,316.77 or total value of P226,559.13, without, however, causing damage to the government, inasmuch as the aforestated lumbers were recovered.
>
> CONTRARY to Section 68 of Presidential Decree 705, as amended by Executive Order No. 277, Series of 1987, in relation to Article 309 and 310 of the Revised Penal Code.[9]

Ong and petitioner Tigoy entered pleas of not guilty during the arraignment. Sumagang died after the case was filed while the other co-accused, Lolong Bertodazo, was not arrested and has remained at large.

On October 11, 1996, the Regional Trial Court rendered its Decision, the dispositive portion of which reads:

> WHEREFORE, finding accused Nestor Ong and Rodolfo Tigoy [GUILTY] beyond reasonable doubt of possession of dipterocarp lumber [VALUED] at more than P22,000.00 without the legal documents as required by existing laws and regulations, penalized as qualified theft, this Court sentences them to an indeterminate penalty of ten (10) years and one (1) day of prision mayor to eighteen (18) years and three (3) months of reclusion temporal. The lumber and the conveyances used are forfeited in favor of the government. With costs.
>
> The DENR is ordered to sell/dispose of the lumber and conveyances in accordance with the existing laws, WITHOUT DELAY. Let the Court of Appeals, Fourteenth Division, before which accused Ong's appeal of this Court's denial of his action for replevin relative to his trucks is pending, be furnished with a copy of this judgment.
>
> With costs.
>
> SO ORDERED.[10]

Declaring that "constructive possession" of unlicensed lumber is not within the contemplation of Section 68 of P.D. No. 705, and for failure by the prosecution to prove the complicity of Ong, the Court of Appeals rendered its decision on March 6, 2000 modifying the ruling of the lower court, thus:

> WHEREFORE, the judgment appealed from is hereby MODIFIED in that accused-appellant Nestor Ong is acquitted for insufficiency of evidence and his two (2) trucks are ordered returned to him. The conviction of Rodolfo Tigoy is upheld and the decision dated October 11, 1996 is AFFIRMED in all respects.
>
> SO ORDERED.[11]

On March 24, 2000, petitioner filed with the Court of Appeals a Motion for Reconsideration praying for his

acquittal but the same was denied on August 23, 2000.Hence, this petition, with the following assignment of errors:

> I
>
> THE COURT OF APPEALS ERRED IN FINDING "COLLUSION" BETWEEN LOLONG BERTODAZO AND PETITIONER TIGOY;
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> II
>
> THE COURT OF APPEALS ERRED IN COMPLETELY DISREGARDING THE AFFIDAVIT OF LOLONG BERTODAZO AGAINST HIS PENAL INTEREST;
>
> III
>
> THE COURT OF APPEALS ERRED IN FINDING PETITIONER TIGOY TO HAVE KNOWLEDGE OF THE LUMBER HE WAS TRANSPORTING; AND,
>
> IV
>
> THE COURT OF APPEALS ERRED IN FINDING THAT PETITIONER TIGOY HAD ACTUAL AND PHYSICAL POSSESSION OF THE UNDOCUMENTED LUMBER.[12]

Stated otherwise, the core issue presented is whether or not petitioner Tigoy is guilty of conspiracy in possessing or transporting lumber without the necessary permit in violation of the Revised Forestry Code of the Philippines.

Section 68 of P.D. No. 705, as amended by E.O. No. 277, otherwise known as the Revised Forestry Code of the Philippines, provides:

> Section 68. Cutting, Gathering and/or Collecting Timber or Other Forest Products Without License. – Any person who shall cut, gather, collect, remove timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, without any authority, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code. . . .

There are two ways of violating Section 68 of the above Code: 1) by cutting, gathering and/or collecting timber or other forest products without a license; and, 2) by possessing timber or other forest products without the required legal documents.

Petitioner was charged with and convicted of transporting lumber without a permit which is punishable under Section 68 of the Code. He, Sumagang and the rest of their companions were apprehended by the police officers in flagrante delicto as they were transporting the subject lumber from Larapan to Dipolog City.

Petitioner maintains that he could not have conspired with Lolong Bertodazo as he did not know about the unlicensed lumber in the trucks. He believed that what he was transporting were bags of cement in view of the contract between Ong and Bertodazo. Also, he was not around when Bertodazo loaded the trucks with the lumber hidden under the bags of cement.

This contention by petitioner, however, was not believed by the lower court. In declaring that petitioner connived with Bertodazo in transporting the subject lumber, the court a quo noted:

> x x x The evidence of the prosecution established that the two drivers of accused Ong refused to stop at a checkpoint, a fact admitted by both in their affidavit, Exhs. "E" and "E-2". Likewise, the two drivers refused to stop on the national highway near a bus terminal when required by a uniformed policeman. When finally accosted, one of the drivers, whom witness Tome identified as the driver of the green truck, Sumagang, but

> who actually was Tigoy (as he was the driver of the green truck and who came to the road block first, being the lead driver) offered "S.O.P." which to witness Tome meant that the trucks were carrying "hot items."
>
> Why would the drivers refuse to stop when required? Did they fear inspection of their cargo? Why would "S.O.P." (which in street parlance is grease money) be offered to facilitate the passage of the trucks? The only logical answer to all these questions is that the drivers knew that they were carrying contraband lumber. This Court believes that the drivers had knowledge of the fact that they were transporting and were in possession of undocumented lumber in violation of law.[13]

In offenses considered as mala prohibita or when the doing of an act is prohibited by a special law such as in the present case, the commission of the prohibited act is the crime itself. It is sufficient that the offender has the intent to perpetrate the act prohibited by the special law, and that it is done knowingly and consciously.[14]

Direct proof of previous agreement to commit an offense is not necessary to prove conspiracy.[15] Conspiracy may be proven by circumstantial evidence.[16] It may be deduced from the mode, method and manner by which the offense is perpetrated, or inferred from the acts of the accused when such acts point to a joint purpose and design, concerted action and community of interest.[17] It is not even required that the participants have an agreement for an appreciable period to commence it.[18]

Petitioner's actions adequately show that he intentionally participated in the commission of the offense for which he had been charged and found guilty by both the trial court and the Court of Appeals.

Finding that petitioner's conviction was reached without arbitrariness and with sufficient basis, this Court upholds the same. The Court accords high respect to the findings of facts of the trial court, its calibration of the collective testimonies of the witnesses, its assessment of the probative weight of the evidence of the parties as well as its conclusions[19] especially when these are in agreement with those of the Court of Appeals, which is the case here. As a matter of fact, factual findings of the trial court, when adopted and confirmed by the Court of Appeals, are generally final and conclusive.[20]

WHEREFORE, the petition is DENIED and the Decision and Resolution, dated March 6, 2000 and August 23, 2000, respectively, of the Court of Appeals in CA-G.R. CR No. 20864 are hereby AFFIRMED.

Costs against petitioner.

SO ORDERED.

Puno, (Chairperson), Sandoval-Gutierrez, Corona, and Garcia, JJ., concur.

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[1] Records, Exhibit "1," p. 237.

[2] TSN, August 23, 1996, p. 40.

[3] TSN, September 13, 1990, pp. 12-14.

[4] CA Rollo, p. 50.

[5] TSN, September 13, 1995, pp. 28-36.

[6] The original and exclusive jurisdiction over the confiscation of "all conveyances used either by land, water or air in the commission of the offense and to dispose of the same" is vested in the Department of Environment and Natural Resources (DENR) Secretary or a duly authorized representative. The DENR has the supervision and control over the enforcement of forestry, reforestation, parks, game and wildlife laws, rules and regulations

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(Sections 5 and 7 of P.D. No. 705).

[7] CA Rollo, pp. 174-176.

[8] Records, Exhibit "D," p. 240.

[9] Rollo, pp. 25-26.

[10] CA Rollo, pp. 51-52.

[11] Rollo, p. 38.

[12] Id. at 14.

[13] Rollo, p. 191.

[14] United States v. Go Chico, 14 Phil. 128 (1909), citing Gardner v. The People, 62 N.Y., 299.

[15] Serrano v. Court of Appeals, G.R. No. 123896, June 25, 2003, 404 SCRA 639.

[16] People v. Miranda, G.R. No. 123917, December 10, 2003, 417 SCRA 383.

[17] People v. Gomez, G.R. No. 128378, April 30, 2003, 402 SCRA 210.

[18] People v. Miranda, supra note 16.

[19] People v. Sibonga, G.R. No. 95901, June 16, 2003, 404 SCRA 10.

[20] Serrano v. Court of Appeals, supra note 15, states: "Factual findings of the trial court, when adopted and confirmed by the Court of Appeals , are final and conclusive , and may not be reviewed on appeal except: (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is a grave abuse of discretion; (3) when the finding is grounded entirely on speculations, surmises or conjectures; (4) when the judgment of the Court of Appeals is based on a misapprehension of facts; (5) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (6) when the findings of fact are conclusions without citation of specific evidence on which they are based; (7) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and, (8) when the findings of fact are premised on the absence of evidence and are contradicted by the evidence on record."

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