

FELICISIMO RIETA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 147817. August 12, 2004

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Corpus delicti refers to the fact of the commission of the crime. It may be proven by the credible testimonies of witnesses, not necessarily by physical evidence. In-court identification of the offender is not essential, as long as the identity of the accused is determined with certainty by relevant evidence. In the present case, there is no doubt that petitioner was the same person apprehended by the authorities and mentioned in the Information. His possession of the smuggled cigarettes carried the prima facie presumption that he was engaged in smuggling. Having failed to rebut this presumption, he may thus be convicted of the crime charged.

The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, seeking to set aside the December 22, 2000 Decision[2] of the Court of Appeals (CA) in CA-GR CR No. 17338. The CA affirmed with modification the February 18, 1994 Consolidated Judgment[3] of the Regional Trial Court (RTC)[4] of Manila (Branch 46) in Criminal Case Nos. CCC-VI-137(79) and CCC-VI-138(79), finding Felicisimo Rieta guilty of smuggling. The assailed CA Decision disposed as follows:

“WHEREFORE, the assailed Decision is hereby MODIFIED as follows:

(a) The Court AFFIRMS the decision of the trial court finding Felicisimo Rieta, Arturo Rimorin, Pacifico Teruel and Carmelo Manaois GUILTY BEYOND REASONABLE DOUBT of the crime charged.

(b) Appellants Ernesto Miaco, Guillermo Ferrer, Fidel Balita, Robartolo Alincastre and Ernesto de Castro are ACQUITTED as recommended by the Solicitor General.”[5]

Reconsideration was denied in the April 16, 2001 CA Resolution,[6] which petitioner also assails.

Petitioner and his six co-accused -- Arturo Rimorin, Fidel Balita, Gonzalo Vargas, Robartolo Alincastre, Guillermo Ferrer and Ernesto Miaco -- were charged in an Information, which reads:

“That on or about October 15, 1979, in the City of Manila, Philippines, the said accused, conspiring and confederating together and helping one another, 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, did then and there [willfully], unlawfully [and] fraudulently import or bring into the Philippines or assist in so doing contrary to law, three hundred five (305) cases of assorted brands of blue seal cigarettes which are foreign articles valued at P513,663.47 including duties and taxes, and/or buy, sell, transport or assist and facilitate the buying, selling and transporting of the above-named foreign articles after importation knowing the same to have been imported contrary to law which was found in the possession of said accused and under their control which articles said accused fully well knew have not been properly declared and that the duties

and specific taxes thereon have not been paid to the proper authorities in violation of said Sec. 3601 of the Tariff and Customs Code of the Philippines, as amended by Presidential Decree No. 34, in relation to Sec. 3602 of said Code and Sec. 184 of the National Internal Revenue Code.”[7]

The Facts

Version of the Prosecution (Respondent)

The Office of the Solicitor General (OSG)[8] presents the prosecution’s version of the facts as follows:

“On October 12, 1979, Col. Panfilo Lacson, the[n] Chief of the Police Intelligence Branch of the Metrocom Intelligence and Security Group (MISG for brevity), received information that certain syndicated groups were engaged in smuggling activities somewhere in Port Area, Manila. It was further revealed that the activities [were being] done at nighttime and the smuggled goods in a delivery panel and delivery truck [were] being escorted by some police and military personnel. He fielded three surveillance stake-out teams the following night along Roxas Boulevard and Bonifacio Drive near Del Pan Bridge, whereby they were to watch out for a cargo truck with Plate No. T-SY-167 bound for Malabon. Nothing came out of it. On the basis of his investigation, [it was discovered that] the truck was registered in the name of Teresita Estacio of Pasay City.

“At around 9:00 o’clock in the evening of October 14, 1979, Col. Lacson and his men returned to the same area, with Col. Lacson posting himself at the immediate vicinity of the 2[nd] COSAC Detachment in Port Area, Manila, because as per information given to him, the said cargo truck will come out from the premises of the 2[nd] COSAC Detachment. COSAC stands for Constabulary Off-Shore Anti-Crime Battalion. The night watch lasted till the wee hours of the following morning. About 3:00 a.m. an Isuzu panel came out from the place of the 2[nd] COSAC Detachment. It returned before 4:00 a.m. of [the] same day.

“At around 5 minutes before 4:00 o’clock that morning, a green cargo truck with Plate No. T-SY-167 came out from the 2[nd] COSAC Detachment followed and escorted closely by a light brown Toyota Corona car with Plate No. GR-433 and with 4 men on board. At that time, Lt. Col. Panfilo Lacson had no information whatsoever about the car, so he gave an order by radio to his men to intercept only the cargo truck. The cargo truck was intercepted. Col. Lacson noticed that the Toyota car following the cargo truck suddenly made a sharp U-turn towards the North, unlike the cargo truck [that] was going south. Almost by impulse, Col. Lacson’s car also made a U-turn and gave chase to the speeding Toyota car, which was running between 100 KPH to 120 KPH. Col. Lacson sounded his siren. The chase lasted for less than 5 minutes until said car made a stop along Bonifacio Drive, at the foot of Del Pan Bridge. Col. Lacson and his men searched the car and they found several firearms, particularly: three (3) .45 cal. Pistols and one (1) armalite M-16 rifle. He also discovered that T/Sgt. Ernesto Miaco was the driver of the Toyota car, and his companions inside the car were Sgt. Guillermo Ferrer, Sgt. Fidel Balita and Sgt. Robartolo Alincastré, [all] belonging to the 2[nd] COSAC Detachment. They were found not to be equipped with mission orders.

“When the cargo truck with Plate No. T-SY-167 was searched, 305 cases of blue seal or untaxed cigarettes were found inside. The cargo truck driver known only as ‘Boy’ was able to escape while the other passengers or riders of said truck were apprehended, namely: Police Sgt. Arturo Rimorin of Pasay City Police Force, Pat. Felicísimo Rieta of Kawit Police Force, and Gonzalo Vargas, a civilian.

“x x x x x x x x

“Lacson’s men hauled the intercepted vehicles, the arrested men and confiscated goods to Camp Crame, Quezon City. All the 371 cases (305 + 66) of blue seal cigarettes were turned over to the Bureau of Customs. Sgt. Bienvenido Balaba executed an Affidavit of Arrest together with Arnel Acuba. The Booking and Information Sheet of Ernesto de Castro showed that he was arrested by the MISG after delivering assorted blue seal cigarettes at 185 Sanciangco St., Tonsuya, Malabon.”[9]

[Version of the Defense (Petitioner)]

Petitioner, on the other hand, denied any knowledge of the alleged smuggling of the blue-seal cigarettes. He sets forth his version of the facts as follows:

“Petitioner Rieta testified that he was a policeman assigned at Kawit Cavite. In the early morning of October 15, 1979, he was in Manila together with Boy. He met Boy in 1978 when the latter figured in a vehicular accident in Kawit, Cavite. x x x After a week, Boy visited him at the Kawit Police Station and thereafter, met him four to five times. He learned that Boy was a businessman hauling slippers, fish and vegetables from Divisoria. For several times, he had accompanied Boy on his business trips when [the latter] hauled fish, vegetables and slippers from Divisoria to Cavite. He was requested by Boy to accompany him on his various trips because there were times when policemen on patrol were demanding money from [the latter]. At other times, other policemen accompanied Boy aside from him, on his trips.

“In the early morning of October 15, 1979 he met Boy in front of the Kawit Town Hall. He learned that Boy will haul household appliances from Divisoria. They boarded a jeep driven by Boy and they proceeded to Cartimar, Pasay City. At Cartimar, Boy left him at a gasoline station, and told him to standby because Boy will get the cargo truck they will use. When Boy returned, he had companions, who were introduced to him as Gonzalo Vargas and Sgt. Rimorin, the petitioner’s co-accused in Criminal Case No. CC-VI-138 (79). From Cartimar, the four (4) of them proceeded to Divisoria and they passed under the Del Pan Bridge. While passing therein, he told Boy that he was hungry, so that when they passed by a small restaurant, he alighted and Sgt. Rimorin followed. Boy told them that he and Gonzalo will proceed to the Port Area and will be back. After thirty to forty five minutes, Boy and Gonzalo returned, and he and Sgt. Rimorin boarded the truck and proceeded to Roxas Boulevard. While they were along Roxas Boulevard near the Daily Express Building, two (2) vehicles intercepted them and ordered them to pull-over. The passengers of the said vehicles introduced themselves as Metrocom soldiers, and ordered them to alight and to raise their hands while poking guns at them. They were ordered to [lie down] flat on their belly on the pavement and were bodily frisked and searched. The Metrocom soldiers did not find anything from their bodies. Thereafter, they (Rieta, Rimorin and Gonzalo) were ordered by the Metrocom soldiers to transfer to a jeep. While they were aboard the jeep, he overheard from the Metrocom soldiers that their driver was able to escape. Likewise, they were also informed by the Metrocom soldiers that the cargo truck was loaded with blue seal cigarettes. The cargo truck was not opened in their presence, nor were the contents thereof shown to them upon their apprehension. From the time he boarded the cargo truck in Cartimar until he and Sgt. Rimorin alighted to take their snacks, up to the time they were apprehended by the Metrocom soldiers, he had not seen a pack of blue cigarette in the cargo truck. He did not notice whether the Metrocom soldiers opened the cargo truck. At Camp Crame, he was investigated without the benefit of counsel, but, nonetheless, he executed and signed a statement because as far as he was concerned he has done nothing wrong. He was detained at Bicutan for more than a year.

“In the early morning of October 15, 1979 he was not carrying any firearm because he has no mission order to do so, and besides Manila was not his jurisdiction. He was suspended from the service, but was reinstated in January 1981. After he was released from Bicutan, he looked for Boy so that he could clear the matter, but he [did not find] Boy anymore.

“In corroboration with the testimony of petitioner Rieta, accused Rimorin, a policeman assigned at Pasay City, testified that the first time he met Boy was in 1978 in the wake and internment of the Late Police Officer Ricardo Escobal. Thereafter, Boy dropped by on several occasions at the Pasay Police Station to request for assistance. Prior to October 15, 1979, Boy again dropped by at the police station and asked him if he had an appointment on the next day. He told Boy that he had no appointment, and the latter requested to accompany him to Sta. Maria, Bulacan to get some rice. Prior thereto, in one of their casual conversations, he learned that Boy was a businessman engaged in hauling various merchandise. He agreed to the request of Boy to accompany him to Sta. Maria, Bulacan. At Sta. Maria, Bulacan, they proceeded to a warehouse containing bags of rice, and they hauled several bags into a truck, and thereafter, proceed[ed] to Quezon City. As compensation Boy gave him a sack of rice. The said transaction was followed by another on October 15, 1979.

In the afternoon of October 14, 1979, Boy again dropped by at the police station and requested him to accompany him to haul household fixtures. They usually haul vegetables and rice early in the morning to avoid the traffic and that was the reason why they met in the early morning of October 15, 1979. He told [Boy] that he will see if he will have [the] time, but just the same they made arrangements that they will see each other at Cartimar, Pasay City not later than 2:30 a.m. in the early morning of October 15, 1979. At the appointed time and place, he met Boy with a companion, who was introduced to him as Gonzalo Vargas, his co-accused in the instant case. Thereafter, they proceeded to a gasoline station nearby. At the gasoline station, at the corner of Taylo and Taft Avenue, near Cartimar, they picked up another person who was later on introduced to him as Felicisimo Rieta. Then the four of them (Boy, Gonzalo, Rieta and Rimorin) boarded the cargo truck and they proceeded to Divisoria. It was Boy who drove the cargo truck, while petitioner was seated next to Boy while accused Rimorin and Gonzalo to his right. While enroute to Divisoria, along Roxas Boulevard before reaching Del Pan Bridge, Boy turned right under the bridge. He commented that it was not the route to Divisoria, and Boy answered 'meron lang ikakarga dito'. On the other hand, Rieta told Boy that he was hungry, and thus, Boy pulled-over at a carinderia at Del Pan Bridge near Delgado Bros. When Rieta alighted he followed, while Boy and Gonzalo proceeded. After less than an hour, Boy and Gonzalo returned. They then proceeded towards Roxas Boulevard, Bonifacio Drive, and Boy drove straight at the corner of Aduana to Roxas Boulevard. When he noticed that the truck was not bound for Divisoria as earlier informed, he asked Boy why they were not taking the route going to Divisoria. Boy replied 'bukas na lang wala ng espasyo'. Immediately, they were intercepted by two vehicles and one of the occupants thereof ordered the driver to pull over. The driver pulled over, and they were ordered to raise their hands and to lay flat on their belly on the pavement right in front of the truck, and they were bodily frisked but they found nothing. He asked the Metrocom soldiers what was it all about, but the Metrocom soldiers were shouting 'asan ang blue seal'. Then they were ordered to board a jeep owned by the Metrocom soldiers, and they were brought to Camp Crame. Before they left the area, he did not see the Metrocom soldiers open the cargo truck. He was brought to the MISG at Camp Crame. When they arrived at Camp Crame, the soldiers thereat were clapping their hands, thus he asked 'ano ba talaga ito' and he got an answer from Barrameda, 'yun ang dahilan kung bakit ka makukulong', pointing to a truck. When he saw the truck, it was not the same truck they boarded in the early morning of October 15, 1979. The truck they boarded was galvanized iron pale sheet covered with canvass while the one at Camp Crame was color red and not covered. He entertained the idea that they were being framed-up. Two days after, he was interrogated and the alleged blue seal cigarettes were shown to him, and he was informed by the investigator that the same blue seal cigarettes were the contents of the cargo truck. When the alleged blue seal cigarettes were taken out of the cargo truck, he was not asked to be present. He asked for the whereabouts of Boy, but he was informed that the latter escaped. The more he believed that there was something fishy or wrong in their apprehension. It was very [conspicuous] that the driver was able to escape because at the time they were apprehended they were the only people at Bonifacio Drive, and thus the possibility of escape was very remote, considering that they were unarmed and the Metrocom soldiers were all fully armed. In both cases at bar, there were about three Pasay policemen who were apprehended. He was detained at Camp Bagong Diwa for more than a year. He knew nothing about the charge against him. When he was at Camp Crame he tried getting in touch with a lawyer and his family, but the MISG did not let him use the telephone."^[10]

Ruling of the Court of Appeals

Affirming the RTC, the CA noted that while petitioner and his co-accused had mainly raised questions of fact, they had nonetheless failed to point out specific errors committed by the trial court in upholding the credibility of the prosecution's witnesses. The defense of denial proffered by petitioner was considered weak and incapable of overturning the overwhelming testimonial and documentary evidence of respondent. Further, the appellate court ruled that the non-presentation in court of the seized blue-seal cigarettes was not fatal to respondent's cause, since the crime had sufficiently been established by other competent evidence.

The CA rejected the belated claim of petitioner that his arrest was irregular. It ruled that the alleged defect could

not be raised for the first time on appeal, especially in the light of his voluntary submission to and participation in the proceedings before the trial court.

The appellate court, however, found no sufficient evidence against the other co-accused who, unlike petitioner, had not been found to be in possession of blue-seal cigarettes.

Hence, this Petition.[11]Issues

In his Memorandum, petitioner submits the following issues for the Court's consideration:

"1. The respondents trial and appellate courts committed grave abuse of discretion tantamount to lack and/or excess of jurisdiction when [they] convicted herein petitioner notwithstanding the prosecution's failure to prove the guilt of the petitioner beyond reasonable doubt.

"2. The evidence obtained against the accused is inadmissible in evidence because petitioner and his co-accused were arrested without a warrant but by virtue of an arrest and seizure order (ASSO) which was subsequently declared illegal and invalid by this Honorable Supreme Court." [12]

The Court's Ruling

The Petition has no merit.

First Issue:

Sufficiency of Evidence

Petitioner contends that the existence of the untaxed blue seal cigarettes was not established, because the prosecution had not presented them as evidence. He further argues that there was no crime committed, as the corpus delicti was never proven during the trial.

Corpus Delicti Established
by Other Evidence

We do not agree. Corpus delicti refers to the specific injury or loss sustained.[13] It is the fact of the commission of the crime[14] that may be proved by the testimony of eyewitnesses.[15] In its legal sense, corpus delicti does not necessarily refer to the body of the person murdered,[16] to the firearms in the crime of homicide with the use of unlicensed firearms,[17] to the ransom money in the crime of kidnapping for ransom,[18] or -- in the present case -- to the seized contraband cigarettes.[19]

In *Rimorin v. People*, [20] the petitioner therein similarly equated the actual physical evidence -- 305 cases of blue-seal cigarettes -- with the corpus delicti. The appellate court allegedly erred in not acquitting him on reasonable doubt arising from the non-presentation in court of the confiscated contraband cigarettes. Holding that corpus delicti could be established by circumstantial evidence, the Court debunked his argument thus:

"Since the corpus delicti is the fact of the commission of the crime, this Court has ruled that even a single witness' uncorroborated testimony, if credible, may suffice to prove it and warrant a conviction therefor. Corpus delicti may even be established by circumstantial evidence.

"Both the RTC and the CA ruled that the corpus delicti had been competently established by respondent's evidence, which consisted of the testimonies of credible witnesses and the Custody Receipt issued by the Bureau of Customs for the confiscated goods.

"Col. Panfilo Lacson's testimony on the apprehension of petitioner and on the seizure of the blue seal cigarettes was clear and straightforward. He categorically testified as follows:

Q

Let us go back to the truck after you apprehended the COSAC soldiers on board the [C]orona car, what did you do thereafter?

A

We took them to the place where the cargo truck was intercepted, Sir.

Q

What did you notice thereat?

A

Inside the truck were hundreds of cases of blue seal cigarettes, and I also found out that my men were able to apprehend the occupants of the cargo truck although they reported to me that the driver managed to make good escape, Sir.

Q

Now you stated that a search was made on the truck and you found how many cases of blue seal cigarettes?

A

Three hundred five (305) cases, Sir.

Q

Blue seal cigarettes?

A

Yes, Sir.

Q

What do you mean by blue seal cigarettes?

A

Blue seal cigarettes are untaxed cigarettes, Sir.

Q

Did you find out how many were there on board the truck which was intercepted by your men per your order?

A

Yes, Sir, [there] were three.

Q

Who?

A

They were P/Sgt. Arturo Rimorin, Sr.

Q

P/Sgt. Of what department?

A

Of Pasay City Police Force, Sir, and Pat. Felicisimo Rieta.

Q

Of that police department?

A

Of Kawit, Cavite Police Force, and Gonzalo Vargas, Sir.

Q

Who is this Gonzalo Vargas?

A

Civilian Sir.

x x x x x x x x

Fiscal Macaraeg:

I am showing to you a Custody Receipt dated October 15, 1979, which states: Received from Lt. Col. Rolando N. Abadilla, AC of S, M2/CC, MISG. PC METROCOM

(Thru S/Sgt. Rodolfo Bucao, PC) THREE HUNDRED SEVENTY ONE (371) cases of assorted brands of 'Blue Seal' Cigarettes, which were intercepted and confiscated by elements of the MISG, PC METROCOM on or about 0400 15 October 79 along Bonifacio Drive, Manila, which for [purposes] of identification we respectfully request that it be marked [on] evidence as Exhibit 'A'.

COURT:

Mark it Exhibit 'A'.

Fiscal Macaraeg:

Q

Will you please do examine Exhibit 'A' and tell us whether this is the same receipt?

A

This is the same receipt, Sir.

Q

By the way, were photographs taken of the car as well as the vehicle involved in this case, together with the blue seal cigarettes that were confiscated?

A

Yes, Sir.

Q

Do you have copies of these photographs?

A

The copies are with our evidence custodian, Sir.

Q

Can you bring those pictures if required next time?

A

Yes, Sir.

“So, too, did Gregorio Abrigo –customs warehouse storekeeper of the Bureau –categorically testify that the MISG had turned over to him the seized blue seal cigarettes, for which he issued a Custody Receipt dated October 15, 1979.

“We find no reason to depart from the oft repeated doctrine of giving credence to the narration of prosecution witnesses, especially when they are public officers who are presumed to have performed their duties in a regular manner.”[21]

Petitioner argues that the receipt issued by Abrigo, a customs official, was beset with doubt because: 1) it did not state specifically that the blue-seal cigarettes identified therein had been confiscated from petitioner and turned over to Abrigo by Colonel Lacson and/or his men; and 2) it mentioned 371 (instead of 305) cases of confiscated blue-seal cigarettes.

We note, however, that Colonel Lacson himself identified the Custody Receipt as the same one issued for the 305 cases of cigarettes found in the cargo truck, in which petitioner and his co-accused rode, and from which the 66 cases of cigarettes -- subject of Criminal Case No. CCC-VI-138(79) -- were confiscated in Malabon, Metro Manila.[22] This fact (305 plus 66) explains why 371 cases were indicated therein. At any rate, petitioner argues on minor discrepancies that do not affect the integrity of the Receipt, issued in due course by a customs official who was duty-bound to put the seized contraband cigarettes in safekeeping.

The existence of the 305 cases of blue-seal cigarettes found in the possession of petitioner and his co-accused was duly proven by the testimonies of the prosecution witnesses -- Lacson and Abrigo. They had testified in compliance with their duty as enforcers of the law. Their testimonies were rightly entitled to full faith and credit, especially because there was no showing of any improper motive[23] on their part to testify falsely against petitioner. Further, the Court accords great respect to the factual conclusions drawn by the trial court, especially when affirmed by the appellate court as in this case.[24]

Absurd is the claim of petitioner that, because Colonel Lacson was not the officer who had actually intercepted the cargo truck in which the former rode, the latter’s testimony was therefore hearsay. The testimony of the colonel on his participation in the apprehension of the truck sufficiently rebutted this contention.

Lacson testified that he had personally received information regarding the smuggling activities being conducted by a syndicated group in that place. He was also informed that smuggled items would be transported from the 2nd COSAC Detachment in the Port Area to Malabon by a cargo truck with Plate No. T-SY-167. During the stakeout surveillance on the night of October 14, 1979, he saw -- from his post within the vicinity of the 2nd COSAC Detachment -- the identified cargo truck coming out of the Port Area. While trailing behind, he radioed his men posted along Roxas Boulevard to stop the truck. Later in court, he described how his men had actually intercepted it.[25]

Petitioner insists that Colonel Lacson, who had given chase to a Toyota car and was not among the officers who had intercepted the truck, could not have seen him as one of the passengers of the latter vehicle. Notably, however, the chase of the Toyota car had lasted no more than 5 minutes, and the colonel’s team immediately

returned to the subject truck after the chase.[26] Lacson, however, categorically said that he had seen 305 cases of blue-seal cigarettes inside the cargo vehicle, and that petitioner was one of its passengers.

It should be borne in mind that Colonel Lacson -- as head of that particular surveillance operation -- had full knowledge, control and supervision of the whole process. He had organized the surveillance teams and given orders to his men prior to the apprehension of the vehicles suspected of carrying smuggled items. Furthermore, he was present during the surveillance operations until the apprehension of the cargo truck. Thus, he was clearly competent to testify on the matter.

The denial by petitioner that he was among the occupants of the truck is highly self-serving and riddled with inconsistencies. He had been directly identified as one of its passengers. Besides, he himself admitted that he had been on board the vehicle when it was intercepted, and that there were no other person in the area.

Courtroom Identification

Unnecessary

Next, petitioner belabors the failure of the prosecution to ask Colonel Lacson to identify him in open court. However, the colonel's positive and categorical testimony pointing to him as one of the passengers of the cargo truck, as well as petitioner's own admission of his presence therein, dispelled the need for a courtroom identification. In *People v. Quezada*, the Court said:

“x x x. While positive identification by a witness is required by the law to convict an accused, it need not always be by means of a physical courtroom identification. As the Court held in *People v. Paglinawan*: ‘x x x. Although it is routine procedure for witnesses to point out the accused in open court by way of identification, the fact that the witness x x x did not do so in this case was because the public prosecutor failed to ask her to point out appellant, hence such omission does not in any way affect or diminish the truth or weight of her testimony.’

“In-court identification of the offender is essential only when there is a question or doubt on whether the one alleged to have committed the crime is the same person who is charged in the information and subject of the trial.”[27]

In the present case, there is no doubt that petitioner was a passenger of the truck, that he was apprehended by the authorities, and that he was the same individual charged under the Information in Criminal Case No. CCC-VI-137(79).

Prima Facie Proof of

Nonpayment of Taxes Sufficient

There is no merit, either, in the claim of petitioner that the prosecution failed to prove the nonpayment of the taxes and duties on the confiscated cigarettes. There is an exception to the general rule requiring the prosecution to prove a criminal charge predicated on a negative allegation, or a negative averment constituting an essential element of a crime. In *People v. Julian-Fernandez*, we held:

“Where the negative of an issue does not permit of direct proof, or where the facts are more immediately within the knowledge of the accused, the onus probandi rests upon him. Stated otherwise, it is not incumbent upon the prosecution to adduce positive evidence to support a negative averment the truth of which is fairly indicated by established circumstances and which, if untrue, could readily be disproved by the production of documents or other evidence within the defendant's knowledge or control. For example, where a charge is made that a defendant carried on a certain business without a license x x x, the fact that he has a license is a matter which is peculiar[ly] within his knowledge and he must establish that fact or suffer conviction.”[28] (Emphasis supplied)

The truth of the negative averment that the duties and specific taxes on the cigarettes were not paid to the proper authorities is fairly indicated by the following circumstances that have been established: (1) the cargo truck, which carried the contraband cigarettes and some passengers including petitioner, immediately came from the 2nd COSAC Detachment; (2) the truck was intercepted at the unholy hour of 4:00 a.m.; (3) it fitted the undisclosed informer's earlier description of it as one that was carrying contraband; and (4) the driver ran away. Hence, it was up to petitioner to disprove these damning circumstances, simply by presenting the receipts showing payment of the taxes. But he did not do so; all that he could offer was his bare and self-serving denial.

Knowledge of the Illegal

Nature of Goods

The fact that 305 cases of blue-seal cigarettes were found in the cargo truck, in which petitioner and his co-accused were riding, was properly established. Nonetheless, he insists that his presence there was not enough to convict him of smuggling, because the element of illegal possession had not been duly proved. He adds that he had no knowledge that untaxed cigarettes were in the truck.

Petitioner's contention is untenable. Persons found to be in possession of smuggled items are presumed to be engaged in smuggling, pursuant to the last paragraph of Section 3601 of the Tariff and Customs Code.^[29] The burden of proof is thus shifted to them. To rebut this presumption, it is not enough for petitioner to claim good faith and lack of knowledge of the unlawful source of the cigarettes. He should have presented evidence to support his claim and to convince the court of his non-complicity.

In the case adverted to earlier, *Rimorin v. People*, we held thus:

"In his discussion of a similarly worded provision of Republic Act No. 455, a criminal law authority explained thus:

'In order that a person may be deemed guilty of smuggling or illegal importation under the foregoing statute three requisites must concur: (1) that the merchandise must have been fraudulently or knowingly imported contrary to law; (2) that the defendant, if he is not the importer himself, must have received, concealed, bought, sold or in any manner facilitated the transportation, concealment or sale of the merchandise; and (3) that the defendant must be shown to have knowledge that the merchandise had been illegally imported. If the defendant, however, is shown to have had possession of the illegally imported merchandise, without satisfactory explanation, such possession shall be deemed sufficient to authorize conviction.'"^[30] (Emphasis supplied)

In the present case, the explanation given by petitioner was found to be unacceptable and incredible by both the RTC and the CA, which said:

"Now on the explanations of Police Sgt. Rimorin of Pasay City Police Force and Pat. Rieta of Kawit Police Force, riders in the loaded cargo truck driven by 'Boy.' Their claim that they did not have any knowledge about the cargo of blue seal cigarettes is not given credence by the court. They tried to show lack of knowledge by claiming that along the way, 'Boy' and Gonzalo Vargas left them behind at a certain point for snacks and picked them up later after the cargo had been loaded. The Court cannot see its way through how two policemen, joining 'Boy' in the dead of the night, explicitly to give him and his goods some protection, which service would be paid, yet would not know what they are out to protect. And neither could the Court see reason in 'Boy's' leaving them behind when he was going to pick up and load the blue seal cigarettes. 'Boy' knew the risks. He wanted them for protection, so why will he discard them? How so unnatural and so contrary to reason."^[31]

Being contrary to human experience, his version of the facts is too pat and stereotyped to be accepted at face value. Evidence, to be believed, not only must proceed from the mouth of a credible witness; it must also be

credible in itself, as when it conforms to common experience and observation of humankind.[32]

The absence of any suspicious reaction on the part of petitioner was not in accordance with human nature. The involvement or participation he and his co-accused had in the smuggling of the goods was confirmed by their lack of proper and reasonable justification for the fact that they had been found inside the cargo truck, seated in front, when it was intercepted by the authorities. Despite his protestation, it is obvious that petitioner was aware of the strange nature of the transaction, and that he was willing to do his part in furtherance thereof. The evidence presented by the prosecution established his work of guarding and escorting the contraband to facilitate its transportation from the Port Area to Malabon, an act punishable under Section 3601 of the Tax Code.

Second Issue:

Validity of the Search and Seizure

Petitioner contends that his arrest by virtue of Arrest Search and Seizure Order (ASSO) No. 4754 was invalid, as the law upon which it was predicated -- General Order No. 60, issued by then President Ferdinand E. Marcos -- was subsequently declared by the Court, in *Tañada v. Tuvera*,^[33] to have no force and effect. Thus, he asserts, any evidence obtained pursuant thereto is inadmissible in evidence.

We do not agree. In *Tañada*, the Court addressed the possible effects of its declaration of the invalidity of various presidential issuances. Discussing therein how such a declaration might affect acts done on a presumption of their validity, the Court said:

“x x x. In similar situations in the past this Court had taken the pragmatic and realistic course set forth in *Chicot County Drainage District vs. Baxter Bank* to wit:

‘The courts below have proceeded on the theory that the Act of Congress, having been found to be unconstitutional, was not a law; that it was inoperative, conferring no rights and imposing no duties, and hence affording no basis for the challenged decree. x x x It is quite clear, however, that such broad statements as to the effect of a determination of unconstitutionality must be taken with qualifications. The actual existence of a statute, prior to [the determination of its invalidity], is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects --with respect to particular conduct, private and official. Questions of rights claimed to have become vested, of status, of prior determinations deemed to have finality and acted upon accordingly, of public policy in the light of the nature both of the statute and of its previous application, demand examination. These questions are among the most difficult of those which have engaged the attention of courts, state and federal, and it is manifest from numerous decisions that an all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified.’

x x x x x x x x x

“Similarly, the implementation/enforcement of presidential decrees prior to their publication in the Official Gazette is ‘an operative fact which may have consequences which cannot be justly ignored. The past cannot always be erased by a new judicial declaration x x x that an all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified.’”^[34]

The *Chicot* doctrine cited in *Tañada* advocates that, prior to the nullification of a statute, there is an imperative necessity of taking into account its actual existence as an operative fact negating the acceptance of “a principle of absolute retroactive invalidity.” Whatever was done while the legislative or the executive act was in operation should be duly recognized and presumed to be valid in all respects.^[35] The ASSO that was issued in 1979 under General Order No. 60 -- long before our Decision in *Tañada* and the arrest of petitioner -- is an operative fact that can no longer be disturbed or simply ignored.

Furthermore, the search and seizure of goods, suspected to have been introduced into the country in violation of customs laws, is one of the seven doctrinally accepted exceptions[36] to the constitutional provision. Such provision mandates that no search or seizure shall be made except by virtue of a warrant issued by a judge who has personally determined the existence of probable cause.[37]

Under the Tariff and Customs Code, a search, seizure and arrest may be made even without a warrant for purposes of enforcing customs and tariff laws. Without mention of the need to priorly obtain a judicial warrant, the Code specifically allows police authorities to enter, pass through or search any land, enclosure, warehouse, store or building that is not a dwelling house; and also to inspect, search and examine any vessel or aircraft and any trunk, package, box or envelope or any person on board; or to stop and search and examine any vehicle, beast or person suspected of holding or conveying any dutiable or prohibited article introduced into the Philippines contrary to law.[38]

WHEREFORE, the Petition is DENIED, and the assailed Decision AFFIRMED. Costs against petitioner.

SO ORDERED.

Corona, and Carpio-Morales, JJ., concur.
Sandoval-Gutierrez, J., on leave.

[1] Rollo, pp. 11-71. Petitioner erroneously entitled his recourse as a “Petition for Certiorari.”

[2] Id., pp. 155-177. Ninth Division. Penned by Justice Eubulo G. Verzola (Division chairman) and concurred in by Justices Marina L. Buzon and Edgardo P. Cruz (members).

[3] Id., pp. 74-97.

[4] Presided by Judge Teresita Dy-Liacco Flores (now a justice of the Court of Appeals).

[5] CA Decision, p. 24; rollo, p. 176.

[6] Rollo, p. 199.

[7] RTC Decision, pp. 1-2; rollo, pp. 74-75.

[8] In its Comment to the Petition, the OSG adopted the narration of facts in the CA’s Decision. Respondent’s Memorandum, signed by Assistant Solicitor General Cecilio O. Estoesta and Associate Solicitor Glenn R. Luansing did not contain any statement of facts.

[9] Respondent’s Comment, pp. 2-4; rollo, pp. 331-333.

[10] Petitioner’s Memorandum, pp. 13-19; rollo, pp. 414-420.

[11] This case was deemed submitted for decision on September 6, 2002, upon this Court’s receipt of petitioner’s Memorandum, signed by Atty. Simon D. Victa. Respondent’s Memorandum, signed by Assistant Solicitor General Cecilio O. Estoesta and Associate Solicitor Glenn R. Luansing, was received by this Court on August 23, 2002.

[12] Petitioner’s Memorandum, pp. 22-23; rollo, pp. 433-434. Original in upper case.

[13] *People v. Agsunod Jr.*, 366 Phil. 294, May 3, 1999.

[14] *People v. Mittu*, 388 Phil. 779, June 8, 2000; *People v. Agsunod Jr.*, *supra*.

[15] *People v. Oliva*, 341 SCRA 78, September 26, 2000; *People v. Gutierrez*, 327 Phil. 679, July 5, 1996; *People v. Orehuela*, 232 SCRA 82, April 29, 1994; *People v. Kalim*, 81 Phil. 107, May 27, 1948.

[16] *People v. Roluna*, 231 SCRA 446, March 24, 1994 (citing *People v. Sasota*, 91 Phil. 111, April 18, 1952).

[17] *People v. Narvasa*, 298 SCRA 637, November 16, 1998.

[18] *People v. Mittu*, *supra*.

[19] *Rimorin Sr. v. People*, 402 SCRA 393, April 30, 2003. This was an appeal taken by petitioner's co-accused Arturo G. Rimorin Sr. from the same CA Decision, subject of the instant Petition.

[20] *Supra*.

[21] *Id.*, pp. 400-402, per Panganiban, J.

[22] TSN, May 14, 1981, pp. 52-53; rollo, pp. 249-250.

[23] *Amper v. Sandiganbayan*, 344 Phil. 849, September 24, 1997.

[24] *Rimorin Sr. v. People*, *supra*; *People v. Villanueva*, 362 Phil. 17, January 29, 1999; *People v. Sagun*, 363 Phil. 1, February 19, 1999.

[25] TSN, May 14, 1981, pp. 22-31; rollo, pp. 221-230.

[26] *Id.*, pp. 33, 60-61.

[27] 425 Phil. 877, 889, January 30, 2002, per Panganiban, J.

[28] *People v. Julian-Fernandez*, 372 SCRA 608, 625, December 18, 2001, per Davide Jr., CJ (citing *People v. Manalo*, 230 SCRA 309, February 23, 1994).

[29] "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 x x x.

x x x x x x x x

"When, upon trial for a violation of this section, the defendant is shown to have or to have had possession of the article in question, 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." (Emphasis provided)

[30] *Supra* at note 19, p. 403.

[31] CA Decision, pp. 18-19; rollo, pp. 171-172.

[32] *Rodriguez v. Court of Appeals*, 248 SCRA 288, September 18, 1995.

[33] 136 SCRA 27, April 24, 1985.

[34] *Id.*, pp. 40-41, per Escolin, J.

[35] See also *Tan v. Barrios*, 190 SCRA 686, October 18, 1990.

[36] The other exceptions are as follows: (1) search incidental to a lawful arrest, (2) seizure of evidence in plain

view, (3) search of moving vehicles, (4) consented warrantless search, (5) stop and frisk situations (Terry search), and (6) exigent and emergency circumstances.

[37] *Caballes v. Court of Appeals*, 424 Phil 263, January 15, 2002; *People v. Doria*, 301 SCRA 668, January 22, 1999; *Padilla v. Court of Appeals*, 269 SCRA 402, March 12, 1997; *Mustang Lumber, Inc. v. Court of Appeals*, 257 SCRA 430, June 18, 1996.

[38] *People v. CFI of Rizal, Br. IX*, 101 SCRA 86, November 17, 1980 (citing pertinent provisions of the Tariff and Customs Code).

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