

CRISTE B. VILLANUEVA, PETITIONER, VS. THE HON. SECRETARY OF JUSTICE AND HORST-KESSLER VON SPRENGEISEN, RESPONDENTS.

G.R. No. 162187. November 18, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before the Court is a petition for review on certiorari of the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 76999 dismissing the petition for certiorari assailing the finding of the Secretary of Justice that no probable cause exists against private respondent Horst-Kessler Von Sprengelsen for perjury.

The Antecedents

On April 2, 1996, the Refractories Corporation of the Philippines (RCP) filed a protest before the Special Committee on Anti-Dumping of the Department of Finance against certain importations of Hamburg Trading Corporation (HTC), a corporation duly organized and existing under the laws of the Philippines. The matter involved 151,070 tons of magnesite-based refractory bricks from Germany.[2] The case was docketed as Anti-Dumping Case No. I-98.

The protest was referred to the Bureau of Import Services (BIS) of the Department of Trade and Industry, to determine if there was a prima facie case for violation of Republic Act (R.A.) No. 7843, the Anti-Dumping Law. Sometime in February 1997, the BIS submitted its report to the Tariff Commission, declaring that a prima facie case existed and that continued importation of refractory bricks from Germany would harm the local industry. It adopted the amount of DM 1,200 per metric ton as the normal value of the imported goods.[3]

The HTC received a copy of the said report on February 14, 1997. However, before it could respond, the chairman of the Tariff Commission prodded the parties to settle the matter amicably. A conference ensued between RCP Senior Vice President and Assistant General Manager Criste Villanueva and Jesus Borgonia, on the one hand, and HTC President and General Manager Horst-Kessler Von Sprengelsen and Sales Manager Dennis Gonzales, on the other. During the conference, the parties agreed that the refractory bricks were imported by the HTC at a price less than its normal value of DM 1,200, and that such importation was likely to injure the local industry. The parties also agreed to settle the case to avoid expenses and protracted litigation. HTC was required to reform its price policy/structure of its importation and sale of refractory bricks from Germany to conform to the provisions of R.A. No. 7843 and its rules and regulations. Jesus Borgonio thereafter prepared and signed a compromise agreement containing the terms agreed upon which Villanueva and Borgonia signed.[4] Bienvenido Flores, an Office Clerk of RCP, delivered the agreement to HTC at the 9th Floor of Ramon Magsaysay Center Building, 1680 Roxas Boulevard, Manila by Von Sprengelsen's approval.[5]

However, Von Sprengelsen did not sign the agreement. Borgonia revised the agreement by inserting the phrase "based on the findings of the BIS" in paragraph 1 thereof. Villanueva and Borgonia signed the agreement and had the same delivered to the office of HTC on April 22, 1997 by Lino M. Gutierrez, a technical assistant of RCP. Gonzales received the agreement and delivered the same to Von Sprengelsen. After 20 minutes, Gonzales

returned, with the agreement already signed by Von Sprengesen.[6] Gonzales, who had also signed, then gave it to Gutierrez. On the same day, Notary Public Zenaida P. De Zuñiga notarized the agreement.[7] Gonzales delivered a copy of the notarized Agreement to HTC.[8]

RCP submitted the compromise agreement to the Tariff Commission. During the May 9, 1997 hearing before the Commission for the approval of the agreement, a representative of HTC appeared. He offered no objection to the Agreement. The Commission submitted its report to the Special Committee which rendered a decision declaring that, based on the findings of the BIS, the normal value of the imported refractory bricks was DM 1,200 per metric ton. HTC received a copy of the decision on March 4, 1998. Neither RCP nor HTC appealed the decision to the Court of Tax Appeals.

In the meantime, HTC imported refractory bricks from Germany anew and noted that the normal value of the said importation under the decision of the Special Committee based on the BIS report was DM 1,200 per metric ton. On July 28, 1998, the HTC filed an Urgent Motion to Set Aside and/or Vacate Judgment with the Special Committee on Anti-Dumping, praying that such decision be declared null and void on the following grounds:

- THE FRAUD HAD BEEN COMMITTED BY THE PROTESTANT DURING THE NEGOTIATION FOR THE PREPARATION OF THE COMPROMISE AGREEMENT.
- THAT INSERTIONS AND/OR SUBSTITUTION OF THE FACTS NOT AGREED UPON WAS DELIBERATELY AND SURREPTITIOUSLY MADE BY THE PROTESTANT IN THE COMPROMISE AGREEMENT WITHOUT THE KNOWLEDGE AND CONSENT OF THE PROTESTEE.[9]

The motion was verified by Von Sprengesen. The HTC averred therein that Villanueva violated Article 172 of the Revised Penal Code when he surreptitiously inserted the phrase "based on the findings of the BIS" in the agreement without the knowledge and consent of Von Sprengesen and despite their agreement to put behind them the findings of the BIS. Appended to the motion was an Affidavit of Merit executed by Von Sprengesen in which he alleged, inter alia, that sometime in February 1997, the BIS came out with its Report declaring that the normal value of the magnesite-based refractory bricks was DM 1,200 per metric ton; before HTC could respond to the report, Villanueva invited him to a conference for the purpose of finding the best solution to the pending case before the Commission; he and Gonzales attended the meeting during which it was agreed, by way of a compromise, that the parties will accept the amount of DM 1,050 per metric ton as the normal value for all magnesite-based refractory bricks from Germany; when he received the draft of the compromise agreement prepared by Villanueva, he approved the same; subsequently, Villanueva transmitted a compromise agreement already signed by him to Von Sprengesen for his review, approval and signature; believing that the compromise agreement reproduced the contents of the first compromise agreement, he signed the second agreement without reading it; when he received, on March 4, 1998, a copy of the decision of the Tariff Commission based on the compromise agreement of the parties wherein the committee adopted the findings and recommendations of the BIS (that the normal value of the shipment was DM 1,200 per metric ton), he was shocked because he never agreed to the use of such findings for the reformation of its price policies; there was, in fact, an agreement between him and Villanueva to put behind them the findings of the BIS; he called up Villanueva at his office but failed to contact him despite several attempts; suspecting that something amiss happened, he had the draft of the first compromise agreement retrieved but his secretary failed to locate the same; it was only sometime later that his secretary found the folder-file containing the draft and was appalled to discover that Villanueva had substantially altered the first draft of the compromise agreement; this made him conclude and confirm his suspicion that Villanueva, thru deceit and fraud, induced him to sign the compromise agreement to the prejudice of the HTC.[10]

The RCP opposed the motion. But, in a parallel move, Villanueva, in his capacity as Senior Vice President and

Assistant General Manager of RCP, filed a criminal complaint for perjury against Von Sprengen in the Office of the City Prosecutor of Manila. Appended thereto was a complaint-affidavit executed by Villanueva wherein he declared, inter alia, that Von Sprengen made the following false statements in the Urgent Motion, thus:

- [Complainant] was the one who called up his office, inviting him to a meeting for the purpose of finding the best and most equitable solution to the case (p. 3, Urgent Motion);
- RCP and Hamburg Trading agreed to put behind them the findings and recommendations of the Bureau of Import Services (BIS) with respect to the anti-dumping protest filed by RCP (p. 3, Urgent Motion);
- The original version of the Compromise Agreement sent to him was merely a draft (p. 3, Urgent Motion);
- The phrase "based on the findings of the Bureau of Import Services" was inserted in paragraph 1 of the final Compromise Agreement without his knowledge and consent (p. 3, Urgent Motion); and
- [Complainant] was the one who surreptitiously inserted the aforesaid phrase (p. 3, Urgent Motion).[11]

Villanueva also alleged that Von Sprengen made the following false statements in his Affidavit of Merit:

- [Complainant] invited him to a conference for the purpose of finding the best solution to the case;
- [Complainant and he] agreed to put behind [them] the findings and recommendation of the BIS submitted to the Secretary of Finance;
- We agreed to the amount of DM 1,050/ton as the normal value for all magnesite-based refractory bricks from Germany;
- The original version of the Compromise Agreement sent to him was merely a draft; and
- Through deceit and fraud, [complainant] induced [respondent] to sign the final Compromise Agreement.[12]

In his Counter-Affidavit, Von Sprengen averred that whoever called the other for a conference was not a material matter. Since the first draft of the Compromise Agreement transmitted to him was by fax, he asked the complainant to send to him the hard copy of the Agreement for his signature. He further narrated that when he received the hard copy of the compromise agreement, he did not bother to review since he assumed that it contained the same provisions in the faxed copy. He did not suggest that the phrase "based on the findings of the BIS" be inserted in the hard copy of the agreement because he and Villanueva were at odds on the BIS finding the normal price of the goods was DM 1,200 per metric ton. He insisted that it would have been senseless of him to agree to such insertion; as such, he did not make any willful and deliberate assertion of any falsehood as to any material fact.[13]

Investigating Prosecutor Francisco G. Supnet found no probable cause for perjury against the private respondent and recommended the dismissal of the complaint. Second Assistant City Prosecutor Leoncia Dimagiba reviewed the resolution of Prosecutor Supnet and found probable cause for perjury against the private respondent for alleging in his Affidavit of Merit that he was induced to sign the compromise agreement through fraud and deceit. According to the Second Assistant City Prosecutor, the allegation of the private respondent "thru deceit and fraud to sign the final Compromise Agreement" was a deliberate assertion of a falsehood, designed as it was merely to give the BIS the impression that private respondent was misled into agreeing to the compromise agreement. She further opined that the allegation was perjurious, considering that the private respondent had sufficient time to pass upon the Compromise Agreement and could have availed the services of legal minds who could review the terms and conditions thereof before signing the same;[14] hence, she recommended the reversal of Prosecutor Supnet's resolution and the filing of the information. The City Prosecutor approved the recommendation of the Second Assistant City Prosecutor. Accordingly, an Information for perjury was filed against the private

respondent with the Metropolitan Trial Court of Manila.

The private respondent appealed the resolution to the Secretary of Justice, who reversed the resolution of the City Prosecutor on September 20, 2002. According to the Justice Secretary, the complainant failed to establish the materiality of the alleged false assertions and that the said assertions were willful and deliberate. Moreover, the allegations in the Affidavit of Merit are not altogether false since the intention of the parties in executing the compromise agreement was precisely to put behind the ruling of the BIS, despite which the complainant inserted the condition that the parties would be bound by such findings and recommendations.[15] The decretal portion of the resolution reads:

WHEREFORE, the appealed resolution of the City Prosecutor of Manila is hereby REVERSED. The City Prosecutor is directed to withdraw the information for perjury against respondent Horst-Kessler von Sprengisen and to report the action taken within ten (10) days from receipt hereof.

SO ORDERED.[16]

Villanueva then filed a petition for certiorari with the CA assailing the resolution of the Justice Secretary, alleging therein that grave abuse of discretion, amounting to excess or lack of jurisdiction, was committed in issuing the said resolution.[17] The private respondent, for his part, sought the dismissal of the petition alleging that, as found by the Justice Secretary, there was no probable cause against him for perjury.[18]

On February 13, 2004, the CA dismissed the petition and affirmed the resolution of the Justice Secretary.[19]

The CA declared that, as posited by the Office of the Solicitor General in its comment on the petition, the parties had agreed to put behind them the findings and recommendations of the BIS with respect to the anti-dumping protest. The appellate court stated that its finding is buttressed by the fact that the amount of DM 1,050 was not mentioned in the first compromise agreement and that, under such agreement, the HTC obliged itself "to reform its pricing policy and structure with respect to refractory products being imported to and sold in the Philippines in accordance with the provisions of R.A. No. 7843 and its implementing rules and requirements." The CA emphasized that it was inclined to believe that there was no meeting of the minds of the parties when the petitioner inserted the phrase "based on the findings of the BIS" in the revised compromise agreement; hence, there could not have been perjury when the private respondent executed the Affidavit of Merit and the Urgent Motion to Set Aside and/or Vacate Judgment. The CA also agreed with the findings of the Secretary of Justice that the insertion of the condition in the compromise agreement that the parties would be bound by the BIS findings and recommendation gave the private respondent reason to believe that he was deceived by the petitioner into signing the Agreement; as such, the private respondent's allegation in his Affidavit of Merit, that he was induced to signing the Compromise Agreement through fraud and deceit, was not altogether false. Consequently, the CA ruled, the private respondent did not make any willful and deliberate assertion of a falsehood.[20] The appellate court conformed to the disquisitions of the Secretary of Justice in the assailed resolution and concluded that the private respondent did not, in the Affidavit of Merit, make a willful and deliberate assertion of a falsehood.[21]

Aggrieved, the petitioner filed a petition for review on certiorari with this Court against private respondent Von Sprengisen and the Secretary of Justice, insisting that the CA committed grave abuse of discretion amounting to excess or lack of jurisdiction in dismissing the petition and affirming the assailed resolution.

The petitioner maintains that, during the preliminary investigation, he adduced substantial evidence to prove probable cause for perjury against the private respondent. He maintains that probable cause does not mean actual and positive causes; nor does it import absolute certainty. It is merely based on opinion and reasonable belief. It is enough that it is believed that the act or omission complained of constitutes the offense charged. He avers that,

contrary to the claim of the private respondent in his Affidavit of Merit, the meeting between him and Jesus Borgonio, on the one hand, and the private respondent and HTC Sales Manager Dennis Gonzales, on the other, was arranged by the latter and not by him. As gleaned from the draft and final copies of the compromise agreement, the parties made express reference to the prima facie findings of the BIS that the actual export price of HTC was below the fair market value. By agreeing that such findings of the BIS be included in the Compromise Agreement, the said private respondent impliedly agreed to such findings as basis of the price for which HTC would sell the German-made magnesite-based refractory bricks in the Philippines. The petitioner avers that the fact that the amount of DM 1,050 per metric ton was not specifically mentioned in the compromise agreement was of no importance, considering the parties' acceptance of such findings is based on R.A. No. 7843. He points out that the private respondent could not have failed to notice the difference between the first draft and the final copy of the agreement before signing it because, as alleged by Lino Gutierrez in his reply affidavit, it took the private respondent twenty minutes or so after receiving the agreement to review the final draft before signing it. Moreover, the Urgent Motion to Set Aside and/or Vacate Judgment signed by the private respondent was filed more than 15 months from the execution of the compromise agreement and after four months from the Tariff Commission's approval thereof.

The petitioner argues that it is incredible that during the interregnum of 19 months, the private respondent failed to discover the revisions/insertions in the final draft of the compromise agreement. Considering the premises, the petitioner submits, the private respondent's filing of the Urgent Motion for and in behalf of HTC was merely an afterthought, to enable the latter to escape compliance with the terms and conditions of the Agreement.

The petitioner further insists that the insertion of the contested phrase in the final draft of the compromise agreement was necessary although it may not be in the best interest of HTC. He posits that the falsehoods made by the private respondent in his Urgent Motion and Affidavit of Merit were material to the proceedings in the Anti-Dumping Office of the Tariff Commission because these were used to set aside the compromise agreement executed by the parties.

In his Comment on the petition, the private respondent avers that the issues raised by the petitioner are factual, hence, improper in a petition for review on certiorari under Rule 45 of the Rules of Court. The determination of the existence of a probable cause is primarily an administrative sanction of the Secretary of Justice. He insists that the findings of the Justice Secretary should be accorded great respect, especially since the same were upheld by the CA. He asserts that the petitioner failed to establish in the CA and in this Court that the Justice Secretary committed a grave abuse of discretion amounting to excess or lack of jurisdiction in her resolution.

The petition has no merit.

The pivotal issue in this case is factual – whether or not, based on the records, there was probable cause for the private respondent's indictment for perjury.

Rule 45 of the Rules of Court provides that only questions of fact may be raised in a petition for review on certiorari. Findings of facts of a quasi-judicial agency, as affirmed by the CA, are generally conclusive on the Court, unless cogent facts and circumstances of such a nature warranting the modification or reversal of the assailed decision were ignored, misunderstood or misinterpreted. Thus, the Court may delve into and resolve factual issues in exceptional cases. The petitioner has failed to establish that any such circumstance is present in the case at bar.[22]

The Court finds that the public respondent did not commit any grave abuse of discretion amounting to excess or lack of jurisdiction in issuing the assailed resolution, and that the CA did not commit any reversible error in its assailed decision and resolution. If at all the public respondent erred in issuing the assailed resolution, such is

merely an error in the exercise of jurisdiction, reversible by a petition for review under Rule 43 of the Rules of Court especially so where, as in this case, the issues before the CA were factual and not legal. The absence or existence of probable cause in a given case involves a calibration and a reexamination of the evidence adduced by the parties before the Office of the City Prosecutor of Manila and the probative weight thereof. The CA thus ruled correctly when it dismissed the petition before it.

Probable cause, for purposes of filing a criminal information, has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that the private respondent is probably guilty thereof. It is such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe or entertain an honest or strong suspicion that a thing is so. The term does not mean "actual or positive cause;" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Thus, a finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged. Precisely, there is a trial for the reception of evidence of the prosecution in support of the charge."^[23]

The determination of its existence lies within the discretion of the prosecuting officers after conducting a preliminary investigation upon complaint of an offended party.^[24] The Resolution of the Secretary of Justice declaring the absence or existence of a probable cause affirmed by the CA is accorded high respect. However, such finding may be nullified where grave abuse of discretion amounting to excess or lack of jurisdiction is established.^[25]

Perjury is defined and penalized in Article 183 of the Revised Penal Code, thus:

Art. 183. False testimony in other cases and perjury in solemn affirmation. The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period shall be imposed upon any person who, knowingly making untruthful statements and not being included in the provisions of the next preceding articles, shall testify under oath or make an affidavit upon any material matter before a competent person authorized to administer an oath in cases in which the law so requires.

Any person who, in case of a solemn affirmation made in lieu of an oath, shall commit any of the falsehoods mentioned in this and the three preceding articles of this section shall suffer the respective penalties provided therein.

Perjury is an obstruction of justice; its perpetration may affect the earnest concerns of the parties before a tribunal. The felony is consummated when the false statement is made.^[26]

The seminal modern treatment of the history of perjury concludes that one consideration of policy overshadows all others – the measures taken against the offense must not be so severe as to discourage aggrieved parties from lodging complaints or testifying.^[27] As quoted by Dean Wigmore, a leading 19th Century Commentator, noted that English law, "throws every fence round a person accused of perjury, for the obligation of protecting witnesses from oppression or annoyance, by charges, or threats of charges, of having made false testimony is far paramount to that of giving even perjury its deserts."^[28]

Perjury is the willful and corrupt assertion of a falsehood under oath or affirmation administered by authority of law on a material matter.^[29] The elements of the felony are:

- (a) That the accused made a statement under oath or executed an affidavit upon a material matter.
- (b) That the statement or affidavit was made before a competent officer, authorized to receive and administer oath.
- (c) That in that statement or affidavit, the accused made a willful and deliberate assertion of a falsehood.

(d) That the sworn statement or affidavit containing the falsity is required by law or made for a legal purpose.[30]

A mere assertion of a false objective fact, a falsehood, is not enough. The assertion must be deliberate and willful.[31] Perjury being a felony by dolo, there must be malice on the part of the accused.[32] Willfully means intentionally; with evil intent and legal malice, with the consciousness that the alleged perjurious statement is false with the intent that it should be received as a statement of what was true in fact. It is equivalent to "knowingly." "Deliberately" implies meditated as distinguished from inadvertent acts.[33] It must appear that the accused knows his statement to be false or as consciously ignorant of its truth.[34]

Perjury cannot be willful where the oath is according to belief or conviction as to its truth. A false statement of a belief is not perjury. Bona fide belief in the truth of a statement is an adequate defense.[35] A false statement which is obviously the result of an honest mistake is not perjury.

There are two essential elements of proof for perjury: (1) the statement made by the defendants must be proven false; and (2) it must be proven that the defendant did not believe those statements to be true.[36]

Knowledge by the accused of the falsity of his statement is an internal act. It may be proved by his admissions or by circumstantial evidence. The state of mind of the accused may be determined by the things he says and does, from proof of a motive to lie and of the objective falsity itself, and from other facts tending to show that the accused really knew the things he claimed not to know.[37]

A conviction for perjury cannot be sustained merely upon the contradictory sworn statements of the accused. The prosecution must prove which of the two statements is false and must show the statement to be false by other evidence than the contradicting statement.[38] The rationale of this principle is thus:

... Proof that accused has given contradictory testimony under oath at a different time will not be sufficient to establish the falsity of testimony charged as perjury, for this would leave simply one oath of the defendant as against another, and it would not appear that the testimony charged was false rather than the testimony contradictory thereof. The two statements will simply neutralize each other; there must be some corroboration of the contradictory testimony. Such corroboration, however, may be furnished by evidence aliunde tending to show perjury independently of the declarations of testimony of the accused.[39]

The term "material matter" is the main fact subject of the inquiry, or any circumstance which tends to prove that fact, or any fact or circumstance which tends to corroborate or strengthen the testimony related to the subject of the inquiry, or which legitimately affects the credence of any witness who testified. In this case, a matter is material if it has a material effect or tendency to influence the Commission in resolving the motion of HTC one way or the other. The effects of the statement are weighed in terms of potentiality rather than probability.[40] The prosecution need not prove that the false testimony actually influenced the Commission.[41]

The private respondent did err when he declared, in the motion of the HTC and his affidavit, that it was the petitioner who invited him to a conference. The truth of the matter is that it was Gonzales who did so. Nonetheless, the issue of who called for a conference is of de minimis importance because, after all, the parties agreed to meet after having been prodded by the Chairman of the Commission to settle the case instead of going through the tribulations and expenses of a protracted litigation. No adverse inference (related to the merits of their respective contention in this case) can be ascribed as to whoever called the conference. After all, parties are even urged to settle cases amicably.

Besides, as correctly declared by the Second Assistant City Prosecutor in her resolution:

The allegation that it was complainant who invited respondent to the meeting may not be a deliberate lie.

Respondent may not have known who arranged the meeting, but as he was able to talk to complainant, he presumed that it was complainant who extended the invitation. Moreover, the identity of the one who initiated the meeting is not material considering that there was a meeting of the minds of the Parties.[42]

The Court also agrees with the contention of the private respondent that the copy of the first agreement transmitted to him was a fax copy of the draft, and that, contrary to the allegations of the private respondent, such agreement was prepared by Borgonia and not by the petitioner. As gleaned from page two of the agreement, the particulars of the residence certificates of the petitioner and the private respondent were not typewritten, hence, cannot as yet be notarized. As claimed by the private respondent, a copy was transmitted to him for his personal review, and if he found it to be in order, the petitioner and Borgonia would prepare and sign the agreement and give it back to him for review and signature, with the particulars of his community tax certificate indicated in the final copy.

Undeniably, the identity of the person who prepared or caused to prepare the compromise agreement subsequently signed by the petitioner and the private respondent was of prime importance because only such person should be charged for perjury. The private respondent erroneously stated in his Affidavit of Merit and Urgent Motion that it was the petitioner who prepared the agreement that was signed by the parties. It turned out that it was Borgonia who prepared the first and the second copies. However, the private respondent cannot be held liable for perjury since it was Borgonia who prepared the agreement and not the petitioner. The Court agrees with the following contention of the private respondent in his counter-affidavit:

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While complainant claims that it was not he but Mr. Borgonia who made the insertions, there is no doubt that, indeed, the insertions were made into the document. Since complainant is the signatory to the Compromise Agreement, it is but natural for one to presume that he had made the insertions. At the same time, I can not be expected to know that it was Mr. Borgonia, as claimed by complainant, who made such insertions.[43]

Indeed, Borgonia was merely the Manager of the Management Information Group of RCP, whereas the petitioner was no less than its Senior Vice President and Assistant General Manager, Borgonia's superior. Unless and until approved by the petitioner, any agreement prepared by Borgonia was merely a piece of paper, barren of any legal effect. In this case, the compromise agreement prepared by Borgonia had the petitioner's imprimatur. Borgonia was merely a witness to the agreement. For all legal intents and purposes, the petitioner had the compromise agreement prepared under his supervision and control. It cannot thus be concluded that the private respondent made a deliberate falsehood when he alleged that the agreement was prepared by the petitioner.

The Court is not persuaded by the petitioner's claim that, during the conference, he and the private respondent agreed that, based on the BIS report, the normal value of the imported refractory bricks per metric ton was DM 1,200, and that such report would be used as basis for the revision of the price policy and structure of HTC.

It bears stressing that, during the conference, the petitioner and the private respondent had agreed on three aspects of the case: (1) based on the prima facie findings of the BIS, the normal value of the goods per meter ton was DM 1,200 and that the actual export price of HTC was below the fair market value; (2) to terminate the case, HTC will have to adjust and revise its price policy and structure for imported refractory bricks to conform to R.A. No. 7843 and rules and regulations implementing the law; and (3) if HTC fails or refuses to comply with its undertaking, RCP will be entitled to a writ of execution without need of demand. However, the petitioner and the private respondent could not have agreed on such base price; the petitioner insisted on the amount recommended by the BIS (DM 1,200) while the private respondent insisted on DM 950. There was an impasse. By way of a compromise, the parties agreed to do away with the BIS recommended base value and agreed for HTC to base the

normal value of the importation per metric ton under R.A. No. 7843 and the rules issued implementing the law. This is gleaned from the affidavit of Borgonia:

- During the meeting, Mr. von Sprengesen suggested that the value of DM 1,050/ton be applied as the price at which Hamburg Trading would sell German-made magnesite-based refractory bricks in the Philippines. Mr. Villanueva did not agree to the suggested value, as we considered it low. In the end, both parties decided to base the determination of the price on the provisions of Republic Act No. 7843 and its implementing rules and regulations. ...[44]

Borgonia prepared the first compromise agreement and incorporated therein the agreement of the petitioner and the private respondent arrived at during the conference, thus:

- For the purpose of buying peace and by way of concession in order to end litigation, the SECOND PARTY undertakes and commits to reform its pricing policy and structure with respect to refractory products being imported interest sold in the Philippines in accordance with the provisions of Republic Act 7843 and its implementing rules and regulations.[45]

If, as claimed by the petitioner in his Affidavit-Complaint, he and the private respondent had agreed that HTC will use as basis for its price policy and structural revision, the BIS report, for sure, Borgonia would have incorporated the said agreement in the first compromise agreement. He did not, and Borgonia has not offered any explanation for such failure. The petitioner signed the draft of the agreement without any plaint or revision. It was only in the second compromise agreement that was later signed by the petitioner and the private respondent that Borgonia incorporated the phrase "based on the findings of the BIS." Borgonia and the petitioner made the insertion on their own, without the a priori consent of the private respondent.

The Court is not convinced by the petitioner's contention (and that of Borgonia in his Affidavit) that the petitioner and the private respondent had agreed to leave the final determination of the base value or price of importation per metric ton to a third party (BIS). The private respondent could not have agreed to the use of the BIS report because, as mentioned, he had strenuously objected to its use as basis for the revision of its price policy and structure. For HTC to admit that the BIS finding of DM 1,200 per metric ton was the normal value of the refractory bricks from Germany for the purpose of resolving the anti-dumping case is one thing; but for HTC to agree to be bound by the BIS recommendation for the purpose of revising its price policy and structure is completely a different matter.

With the petitioner and the private respondent's admission of the prima facie findings of the BIS, the Commission can prepare its recommendation to the Special Committee on the protest of the RCP to the HTC importation subject of the case. Thereafter:

D. The Special Committee shall, within fifteen (15) days after receipt of the report of the Commission, decide whether the article in question is being imported in violation of this section and shall give due notice of such decision. In case the decision of dumping is in the affirmative, the special committee shall direct the Commissioner of Customs to cause the dumping duty, to be levied, collected and paid, as prescribed in this section, in addition to any other duties, taxes and charges imposed by law on such article, and on the articles of the same specific kind or class subsequently imported under similar circumstances coming from the specific country.

In the event that the Special Committee fails to decide within the period prescribed herein, the recommendation of the Commission shall be deemed approved and shall be final and executory.[46]

On the matter of the revision or adjustment of the price policy and structure of HTC, the parties had agreed to accomplish the same in due time. It goes without saying that the RCP retained the right to object to or protest to

the price policy and structure revision of HTC.

The agreement of the petitioner and the private respondent not to be bound by the base value in the BIS report for the revision of its price policy and structure is not unexpected because: (1) the findings of the BIS are only prima facie, meaning to say, not conclusive, and HTC was accorded a chance to base its price policy and structure on evidence and informations other than those contained in the BIS report; (2) the normal value of the imported refractory bricks may fluctuate from time to time, hence, the need for any importer to revise its price policy and structure from time to time; and (3) the base value to be used by HTC in revising its price policy would be scrutinized and resolved initially by the Commission, by the Special Committee and by the Court of Tax Appeals on appeal.

The process agreed upon by the petitioner and the private respondent was not only practical and fair, but in accord with law as well.

In fine, the private respondent did not commit any falsehood in the Urgent Motion and his Affidavit of Merit when he declared that he and the petitioner put behind them the BIS report, and agreed to use R.A. No. 7843 and the rules and regulations implementing the same to determine the base price for the revision of the price policy and structure of HTC.

Admittedly, the respondent did not object to the offending phrase before and after signing the agreement and for a considerable stretch period until HTC filed its motion. However, we do not agree with the contention of the petitioner that such failure of the respondent to object to the offending phrase for such period of time amounted to an admission that, indeed, the private respondent was aware of the offending phrase in the Agreement, and to his agreement thereto; and estopped the private respondent from alleging that he was deceived by the petitioner into signing the Compromise Agreement. In his appeal to the DOJ, the private respondent declared that:

3.9 True, respondent-appellant may have been remiss and lacking in circumspect in failing to review the hard copy Compromise Agreement and notice the insertion. Being in the trading business, respondent-appellant personally handles hundreds of documents daily and is on the telephone for most of the day communicating with suppliers and customers. And he had no reason to believe that either complainant-appellee or Mr. Borgonia would make such an insertion, especially after respondent-appellant had accepted the fax Compromise Agreement wording and conveyed such acceptance to complainant-appellee's office. Respondent-appellant also had to reason to even think that such a surreptitious insertion would be made; after all, he had a very warm and friendly meeting with complainant-appellee and Mr. Borgonia and came out of it with a feeling that he could trust complainant-appellee (p. 4, Annex "C").

3.10 Hence, when respondent-appellant alleges that he was induced to sign the hard copy Compromise Agreement through fraud and deceit, respondent-appellant honestly believes that he was misled into signing it. He was misled by the fact that he had been sent the fax Compromise Agreement by complainant-appellee, that he had conveyed its acceptability to complainant-appellee and now requested for the hard copy for execution, that he had been led to trust that the findings and recommendation of the BIS were being put behind them and that complainant-appellee had agreed to such a compromise. The transmittal of the hard copy Compromise Agreement, without any notice or mention by complainant-appellee or complainant-appellee's office that it contained insertions or wording different from the fax Compromise Agreement, and on respondent-appellant's understanding that the wording of the hard copy Compromise Agreement would be exactly the same as the fax Compromise Agreement, constitutes the fraud or deceit allegedly by respondent-appellant.[47]

In his rejoinder-affidavit, the private respondent explained that:

- Again, contrary to the allegations in the Reply-Affidavits, I was unable to review the Compromise Agreement delivered by Mr. Gutierrez on 22 April 1997 as I was busy with numerous calls and business at the time it was

delivered. Also, I had been led to believe in our meetings with Mr. Villanueva and Mr. Borgonia that I could trust them. So, after having seen the fax Compromise Agreement and being amenable to it, I trusted that they would send a genuine hard copy. As it turned out, I was mistaken.[48]

Moreover, even before filing the Urgent Motion and signing the Affidavit of Merit, the private respondent tried for several times to contact the petitioner, but the latter failed to return his calls. This reinforced the suspicion of the private respondent that the insertion of the offending phrase was not, after all, inadvertent but deliberate, calculated to deceive him to the prejudice of HTC. The private respondent may be blamed for putting too much trust and confidence on the petitioner, but he certainly cannot be indicted for perjury for lack of probable cause.

The petitioner failed to append to his petition records of the Commission that the private respondent appeared for HTC, on May 9, 1997, before the Commission for the hearing on the Compromise Agreement; and showing that the private respondent did not object thereto.

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED for lack of merit. The assailed Decision of the Court of Appeals in CA-G.R. SP No. 76999 is AFFIRMED. Costs against the petitioner.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, and Tinga, JJ., concur.
Chico-Nazario, J., on leave.

[1] Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Buenaventura J. Guerrero and Regalado E. Maambong, concurring; Rollo, pp. 28-A-44.

[2]Section 3 of Republic Act No. 7843 reads:

SEC. 3. Section 301, Part 2, Title II, Book I of the Tariff and Customs Code of the Philippines, as amended, is hereby further amended to read as follows:

"SEC. 301. Dumping Duty. –

"A. Whenever the Secretary of Finance or the Secretary of Trade and Industry (hereinafter called the 'Secretary') receives an anti-dumping petition from the domestic industry or the Secretary has reason to believe, from any invoice or other document or newspaper, magazine or information or translation thereof by any reputable language translator made available by any government agency or interested party, that a specific kind or class of foreign article, is being imported into, or sold or is likely to be sold in the Philippines at a price less than its normal value, the importation or sale of which might injure, or retard the establishment of, or is likely to injure an industry producing like articles in the Philippines, the Secretary shall, within twenty (20) days from receipt of such petition or information, determine a prima facie case of dumping. Within five (5) days from such receipt, he shall notify the protestee-importer and require him to submit within ten (10) days from such notice evidence from the producer of the imported article duly authenticated by the Philippine consular or trade office to support the normal value of such product. If no such evidence is submitted within the prescribed period, the Secretary shall base his decision on the available pertinent data.

"Pending determination of a prima facie case of dumping, the petitioner may petition that the release from the Bureau of Customs of the alleged dumped product be withheld. If the Secretary determines that on the face of the petition and documents presented, there exists an imminent danger of injury to a particular industry as a result of the alleged dumping, he shall direct the Commissioner of Customs to hold the release of the questioned importation, upon filing by the petitioner of a bond equal to the alleged margin of dumping. The bond shall answer for damages which the importer may suffer as a result of the holding of the release of the questioned importation, in case the Secretary finds that there is no prima facie case. However, the petitioner's liability for damages shall not exceed the amount of his bond. This bond shall be cancelled once a prima facie

case has been determined by the Secretary. The Secretary may, *motu proprio*, hold the release of the questioned articles based on his information that an imminent danger of injury exists to a particular industry as a result of the alleged dumping.

"The Secretary upon the determination of a *prima facie* case of dumping shall so advise the Tariff Commission (hereinafter called the 'Commission') and shall instruct the Commissioner of Customs to hold the release of the goods or articles in question, unless the protestee/importer shall have filed a cash bond not less than the provisionally estimated dumping duty plus the applicable regular duty based on the documentary evidence submitted with the dumping protest, to answer for the payment of such duties, fees and charges if a dumping case is established. If the protest is dismissed, the cash deposit shall be returned to the importer within ten (10) days from the finality of the order."

The law has been amended by Republic Act No. 8752, otherwise known as the Anti-Dumping Act of 1999.

[3] Rollo, p. 113.

[4] Rollo, pp. 45-46.

[5] *Id.* at 80.

[6] *Id.* at 78-79.

[7] *Id.* at 47-48.

[8] *Id.* at 64.

[9] Rollo, p. 49.

[10] Rollo, pp. 55-56.

[11] *Id.* at 66-67.

[12] Rollo, p. 67.

[13] *Id.* at 71-77.

[14] Rollo, pp. 87-88.

[15] Rollo, p. 116.

[16] *Ibid.*

[17] *Id.* at 123-136.

[18] *Id.* at 137-146.

[19] *Id.* at 28-44.

[20] Rollo, pp. 42-43.

[21] *Ibid.*

[22] (1) ... the conclusion is a finding grounded entirely on speculation, surmise and conjecture; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of both appellant and appellees; (7) the findings of fact of the Court of Appeals are contrary to those of the trial court; (8) said findings of fact are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) the findings of fact of the Court of

Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record. (Sarmiento v. Court of Appeals, G.R. No. 110871, 2 July 1998, 291 SCRA 656)

[23] Baytan v. COMELEC, G.R. No. 153945, 4 February 2003, 396 SCRA 703, citing Allado v. Diokno, 232 SCRA 192 (1994).

[24] Advincula v. Court of Appeals, G.R. No. 131144, 18 October 2000, 343 SCRA 583.

[25] Santos v. Orda, Jr., G.R. No. 158236, 1 September 2004, 437 SCRA 504; Lui v. Matillano, G.R. No. 141176, 27 May 2004, 429 SCRA 449.

[26] U.S. v. Norris, 300 U.S. 564 (1937).

[27] Bronston v. U.S., 409 U.S. 352 (1973) citing Study of Perjury, reprinted in Report of New York Revision Commission, Legis. Doc. No. 60, p. 249 (1935).

[28] Bronston v. U.S., *supra*.

[29] U.S. v. Estraña, 16 Phil. 520 (1910).

[30] Diaz v. People of the Philippines, G.R. No. 65006, 31 October 1990, 191 SCRA 86.

[31] Padua v. Paz, A.M. No. P-00-1445, 30 April 2003, 402 SCRA 21.

[32] People v. Abaya, 74 Phil. 59 (1942).

[33] Welch v. State, 157 S.W. 946; Ferguson v. State, 35 S.W. 369, cited in 70 C.J.S. Perjury §130, p. 473.

[34] Butler v. McKey, 138 F.2d 373 (1943).

[35] Saavedra, Jr. v. Department of Justice, G.R. No. 93173, 15 September 1993, 226 SCRA 438.

[36] State v. Barkwell, 600 S.W.2d 497 (1979).

[37] U.S. v. Sweig, 441 F.2d 114 (1971); U.S. v. Jones, 374 F.2d 414 (1967); U.S. v. Bergman, 354 F.2d 931 (1966); U.S. v. Kelly, 540 F.2d 990 (1976).

[38] U.S. v. Capistrano, 40 Phil. 902 (1920).

[39] People v. McClintic, 160 N.W. 461 (1916).

[40] U.S. v. Berardi, 629 F.2d 723 (1980).

[41] U.S. v. Lococo, 450 F.2d 1196 (1971).

[42] Rollo, p. 87.

[43] Rollo, p. 76.

[44] Rollo, p. 64.

[45] *Id.* at 45.

[46] Section 301 of the Tariff and Customs Code as amended by Republic Act No. 7843.

[47] Rollo, pp. 98-99.

[48] *Id.* at 81.

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