

MARIBEL B. JARDELEZA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. NO. 165265. February 06, 2006

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for review of the Decision[1] of the Court of Appeals (CA) in CA-G.R. CR No. 25912 affirming, on appeal, the decision of the Regional Trial Court (RTC) of Pasay City, Branch 117, convicting Maribel B. Jardeleza, the accused therein, of violating the Tariff and Customs Code (TCC) of the Philippines, as amended.

The Antecedents

The Information charging Jardeleza with violating the TCC was filed before the RTC of Pasay City on October 23, 1997. The accusatory portion of the indictment reads:

That on February 28, 1997, at the arrival area of the Ninoy Aquino International Airport in Parañaque, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named Accused did, then and there, wilfully, unlawfully and feloniously, bring or import into the Philippines in a fraudulent and illegal manner a total of TWENTY POINT ONE (20.1) kilograms of assorted gold jewelry with an estimated value of PESOS SEVEN MILLION FIVE HUNDRED SIXTY-TWO THOUSAND TWO HUNDRED THIRTY-ONE POINT FIFTY CENTAVOS (P7,562,231.50).

That the entry of said 20.1 kilograms of imported assorted gold jewelry into the country was made by the above-named Accused by hiding said jewelry inside a hanger bag and, thereafter, by not declaring it in the Customs Declaration form and, likewise, by verbally denying that she is carrying said items by answering NO when asked by Bureau of Customs if she has anything to declare prior to the actual inspection of her luggage.[2]

The Case for the Prosecution

On February 27, 1997, Lt. Aquilino Ancheta of the Customs Police at the Ninoy Aquino International Airport (NAIA) issued an "alert order" directing all customs policemen to monitor an alleged carrier of jewelry on board Philippine Airlines (PAL) Flight No. PR-502, scheduled to fly in from Singapore the next day.[3] Special Customs Agent Antonio Fuentebella was assigned as Team Leader of X-Ray Operations,[4] while Police Officer Rodrigo Rañada was assigned as one of its members.[5] The Customs Law Enforcement Chief also directed the examiners to conduct rigid luggage inspection of said crew members.[6] Accordingly, customs operation police officers prepared to conduct the surveillance operations.

On February 28, 1997, Customs Examiner Estelita Nario was assigned in the arrival area at the NAIA, Lane 1, which was exclusively for crew members of incoming passenger planes, including flight attendants and stewardesses.

Jardeleza, a flight stewardess of PAL Flight No. PR 502, approached Lane 1 for baggage checking at about 1:00

p.m. to 2:00 p.m. She had two pieces of hand-carried luggage – a black bag and black hanger (zipper) bag.[7] She approached Nario to have the bags examined, and showed the Customs Declaration Form she had accomplished and signed.[8] Rañada was about two feet away.[9] Fuentebella was inspecting the baggage of the incoming passengers.[10]

Nario asked Jardeleza if she had anything to declare, and the latter replied, "No." Nario checked Jardeleza's Customs Declaration Form, and found that nothing was written or marked on the form.[11] Nario then checked the black hand-carried bag, and found that it contained Jardeleza's personal belongings.[12] Nario next told Jardeleza to place her hanger bag on top of the examination table and to open it for inspection.[13]

Jardeleza complied and opened her hanger bag. Nario unzipped the bag and found some clothes inside.[14] Nario proceeded to unzip the interior pockets of the bag and found three black leatherette envelopes,[15] each measuring about one foot by a little over one foot, no more than three inches thick. Nario opened one of the leatherette envelopes and found Bosch spark plug brochures stacked inside.[16] As she emptied the envelope of its contents, she felt something bulging (matambok) beneath the lining.[17] She slipped her hand into the opening and found pieces of jewelry.[18]

Nonplussed, Jardeleza stopped Nario. She placed her hands on the envelope and the hand that held it, looked Nario in the eye, and requested that she be brought inside the examination room at the arrival area because there were media people and law enforcers close by.[19] To keep Jardeleza from being embarrassed, Nario relented.[20] Fuentebella and Rañada helped Jardeleza carry her handbags to the examination room.

Once inside, Nario placed the three leatherette envelopes on the table. Deputy Collector for Passenger Services Rodolfo Buendia and Chief of the Legal and Investigation Staff Atty. Lourdes Mangaoang had been alerted of the incident. The envelopes were opened and their contents examined in the presence of Buendia and Atty. Mangaoang. Pictures of the bags,[21] including the examination, were taken.[22] Nario removed the brochures from the leatherette envelopes. While she saw nothing else inside, she noticed the bulge beneath the lining. She tried to look for an opening until she saw that it was already partially detached. She slipped her hand through the detached portion and retrieved a pack of light brown paper which, when opened, revealed several pieces of jewelry.[23]

Nario opened the second leatherette envelope,[24] and also found brochures. When she emptied the envelope of its contents, she noticed a similar bulging beneath the lining. Once opened, she discovered gold earrings wrapped in a light brown paper. An inspection of the third leatherette envelope[25] yielded pieces of gold rings hidden beneath the lining. Nario placed the jewelry back in the envelopes and placed her signature thereon.[26]

Nario prepared Held-Baggage Receipt No. 16592,[27] where she listed the pieces of jewelry found in Jardeleza's bags, including their gross weight. She signed the receipt and gave a copy to Jardeleza. Nario then turned over the jewelry to the Customs In-Bound Room.[28] The receipt was duly noted by Buendia. Nario then prepared and signed a report[29] to the district collector, recommending that the seized jewelries be confiscated for violation of Sections 3601 and 3602, in relation to Section 2505 of the TCC.

When apprised of the foregoing, Atty. Luis Adviento, the District Commander of the Customs Police, ordered that Jardeleza be brought to the Legal and Investigation Staff for investigation.

Aurelio B. Cabugao of the Legal and Investigation Staff of the Customs Police Division investigated the case and submitted a Memorandum[30] to the Customs Police Director which was duly noted by Atty. Mangaoang. He reported that based on initial investigation, Fuentebella had asked Jardeleza if she had anything to declare, she replied that she was carrying taxable items and asked that they proceed to the Baggage Extension Office. He also

recommended that a seizure and detention order of the jewelry be issued pursuant to Section 2505 of the TCC.

Alma Duplito, a customs jewelry appraiser, assessed the value of the jewelry at P2,979,021.50 and their dutiable value at P4,583,000.00.[31]

On March 31, 1997, Cabugao submitted his Final Report on the investigation. He stated that Jardeleza did not declare the assorted jewelries and recommended that charges be filed against her for violation of Sections 3601 and 3602, in relation to Section 2505, of the TCC.[32] On April 30, 1997, Nario executed her Affidavit[33] relative to the incident.

The Case for the Accused

For her part, Jardeleza testified that she had been with PAL for 23 years. She was assigned to domestic flights during her first year, and in the succeeding years, to international flights.[34] She knew the policy of the Bureau of Customs regarding the exclusive lane through which arriving airline crew members have to pass. She also knew the policy requiring a "100% examination" of all pieces of baggage carried by them.[35]

Jardeleza further narrated that her retirement from PAL was approaching. She decided to invest in the jewelry business with her friend Alberto, and she would get a percentage from the business venture.[36] Her friend acquired assorted jewelries worth P2,000,000.00 and gave them to her for transportation to the Philippines. The pieces of jewelry were placed inside the leatherette bags, which she, in turn, placed in her handbags. Albert also gave her a list of the jewelry.[37]

According to Jardeleza, she knew that the jewelry items were taxable, and that she was obliged to declare them in the Customs Declaration Form of the Customs Bureau.[38] When PAL Flight No. PR-502 landed from Singapore, she was carrying three pieces of baggage: a shoulder bag, a traveling bag and a hanger bag.[39] Her hanger bag contained jewelry items, but she did not declare them in the Customs Declaration Form because they were numerous and could not be accommodated in the tiny form. As she was completely aware of the two Customs policies, she readily told Nario (in the presence of two other customs people one of whom was Fuentebella), about the taxable items she was carrying.[40] Fuentebella approached her and asked what was inside her bag. She readily answered that they were jewelry items.[41]

Jardeleza then requested that her bags be examined inside the examination room to avoid the mischievous eyes of press people.[42] Her request was granted, and the three of them – Nario, Fuentebella and Rañada helped carry her luggage to the examination room.[43] There she opened her luggage and, thereafter, a count was made of the jewelry items.[44] While the examination was being conducted, Deputy District Collector Buendia and Atty. Mangaoang entered and they too witnessed the examination of her baggage.[45]

After the inventory, pictures were taken.[46] Later, Nario left but Atty. Mangaoang told her to come to her office at the NAIA Terminal 1 basement.[47] When she reached the office, she saw a man in front of the computer whom Atty. Mangaoang introduced as Aurelio Cabugao, the assigned investigator on the case. While peeping through the screen, she saw the name of a certain Fuentebella.[48] Curiously, they left Cabugao alone in the room.[49]

According to Jardeleza, Atty. Mangaoang demanded P100,000.00 for her and another P400,000.00 for the rest of the Customs people involved. She told Atty. Mangaoang that she did not have that kind of money.[50] When she told Atty. Mangaoang that she would think it over,[51] she was asked to write the following phone numbers on a piece of paper a girl had given her: 912-7845 in the bedroom, and 913-3670 in the living room. She was also instructed to call if she had the money.[52] Then, at about 7:00 p.m., after some six hours, the Customs people allowed her to go home.[53]

Jardeleza adduced in evidence the Memorandum[54] of Cabugao dated February 28, 1997 to the District Commander; the 1st Indorsement of Atty. Louie Adviento of said report to the District Collector of Customs;[55] and the Warrant of Seizure and Detention Order issued on March 25, 1997 by the Customs District Collector.[56]

Daniel Aquino, a customs police at the NAIA, testified that he discovered the affidavit of Fuentebella dated February 28, 1997 in the computer files in Atty. Mangaoang's office, where Fuentebella stated that Jardeleza admitted to him that she was carrying taxable items. He also read the April 30, 1997 Affidavit of Fuentebella and noticed that Jardeleza's admissions contained in the February 28, 1997 Affidavit were not stated therein.[57] On cross-examination, Aquino admitted that said affidavits/computer files were not signed by the supposed officers.[58]

Atty. Estelita Diaz, who was designated as Hearing Officer in the NAIA Lane Division during the period from 1988 to 1997, testified on the need for customs examiners to follow the procedure laid down in Memorandum Order (MO) No. 40, Series of 1957, and reiterated in MO No. 53, Series of 1958, of the Bureau of Customs.

Other Evidence of the Prosecution

Atty. Mangaoang denied Jardeleza's accusation of bribery. She testified that she was at her office at the basement of the NAIA in the afternoon of February 28, 1997 when Atty. Adviento (who was at the arrival area) called her because somebody had been apprehended for bringing in jewelry. She then proceeded to the interview room at the arrival area, where she met Jardeleza, a PAL stewardess who told her and Adviento that there were still pieces of jewelry on the plane. She instructed the Customs Police to search the plane, but the search yielded negative results.[59] She insisted that she never demanded any money from Jardeleza or from anyone, and that it was the first time she had met the woman.[60]

After Jardeleza had been apprehended, Customs Deputy Collector for Passenger Services Rodolfo Buendia told her, "Attorney, 1.5 million ang panggastos dyan." She clarified that Buendia has since been separated from the service. She further revealed that the "1.5 million offer" was reiterated by Ding Villanueva, a Customs broker. Atty. Estelita Diaz, the hearing officer in the seizure case, also offered her P10,000.00 not to file the case. Ramon Tan, an intelligence officer of the Bureau of Immigration and Deportation, also approached her and said, "Pwede ba nating aregluhin ang kaso ni Jardeleza, may panggastos ito." One of the men under her, Daniel Aquino, asked for Jardeleza's passport, but Aurelio Cabugao, the investigator, refused to hand it over. The passport was later stolen from her office. Carlota Gabriel approached her sometime in March, and informed her that Atty. Sancho Almeda might handle the case. She was also asked if the seizure case could be settled.[61]

Atty. Mangaoang further testified that there were other people in the office when Deputy Collector Buendia tried to bribe her, but they were not within hearing distance; when Ding Villanueva told her that there was 1.5 million "for the boys," they were alone. She also claimed that Atty. Diaz offered the P10,000.00 to her at the arrival area. While she did not charge, she filed an administrative case against Atty. Diaz before the Office of the Ombudsman. Jardeleza herself, in turn, charged her (Atty. Mangaoang) before the same office.[62] Cabugao executed an affidavit corroborating, in part, Atty. Mangaoang's testimony.

The Ruling of the Trial Court

On December 15, 2000, the trial court rendered judgment convicting the accused of violating Section 3601 of the TCC, as amended. The fallo of the decision reads:

WHEREFORE, this court hereby finds accused MARIBEL B. JARDELEZA guilty beyond reasonable doubt of the crime of SMUGGLING as defined under Section 3601 of the Tariff and Customs Code of the Philippines.

Accordingly, said accused is hereby sentenced to suffer an indeterminate imprisonment of EIGHT (8) YEARS and ONE (1) DAY, as minimum, to TWELVE (12) YEARS, as maximum, to pay a fine of TEN THOUSAND PESOS (P10,000.00), and to pay the costs.

The entire jewelry subject of this case which weighs TWENTY POINT TEN (20.10) KILOGRAMS are hereby forfeited in favor of the State. The record shows that these pieces of jewelry are now in the custody of the Bureau of Customs of the Philippines. Said bureau may now dispose of them in accordance with law.[63]

The trial court gave credence and probative weight to the collective testimonies of the witnesses for the prosecution. It rejected the defense of the accused that her importation of the jewelry was not absolutely or unqualifiedly prohibited by law.

The Proceedings in the Court of Appeals

Jardeleza appealed the decision to the CA, where she raised the following principal issues:

I

THE HONORABLE COURT A QUO ERRED IN CONVICTING THE ACCUSED UNDER SECTION 3601 OF THE TARIFF AND CUSTOMS CODE OF THE PHILIPPINES (TCC) WHEN THE FACTS ALLEGED BOTH IN THE INFORMATION AND THOSE SHOWN BY THE PROSECUTION CONSTITUTE THE OFFENSE PUNISHABLE UNDER SECTION 2505 OF THE TCC, OF WHICH THE ACCUSED WAS ACQUITTED.

II

ASSUMING MOREOVER THAT THE CHARGE AND PROOF ARE COVERED UNDER SECTION 3601 OF THE TCC, THE HONORABLE COURT A QUO ERRED IN DISREGARDING CUSTOMS MEMORANDUM ORDER NOS. 40 AND 53 AND THE ADMINISTRATIVE CONSTRUCTION PLACED UPON THE PERTINENT PROVISIONS OF THE TARIFF AND CUSTOMS CODE OF THE PHILIPPINES BY CUSTOMS AUTHORITIES.

III

ASSUMING THAT THE CHARGE AND THE PROOF CAN BE LEGALLY PLACED UNDER THE PURVIEW OF SECTION 3601 OF THE TCC, THE HONORABLE COURT A QUO ERRED IN CONVICTING THE ACCUSED DESPITE LACK OF PROOF BEYOND REASONABLE DOUBT.[64]

On September 8, 2004, the CA rendered judgment affirming the decision of the RTC.

The appellate court ruled that, based on the material averments of the Information, Jardeleza was charged with violating Section 3601 of the TCC. It affirmed the RTC ruling that the prosecution mustered the requisite quantum of evidence to prove her guilt beyond reasonable doubt. According to the CA, Jardeleza committed actual fraud when she brought 20.1 kilograms of taxable assorted jewelries into the country without declaring them in the customs declaration form as required by law. Moreover, she denied having said articles in her possession and hid them beneath the lining of the leatherette envelopes in her hanger bag. The appellate court affirmed the trial court's finding that Jardeleza smuggled the jewelry items into the country, and that such importation was contrary to law. It also ruled that the inconsistencies attributed to the testimonial and documentary evidence of the prosecution were minor and peripheral.

Jardeleza filed a motion for reconsideration of such ruling, which the CA denied.

Petitioner now comes before this Court, alleging that (a) she was charged with violating Section 2505 of the TCC under the Information, and that the prosecution adduced evidence to prove her liability; hence, her conviction for

violation of Section 3601 of the TCC is erroneous; and (b) the prosecution failed to prove her guilt beyond reasonable doubt for violation of Section 3601, in relation to Section 2505, of the TCC.

Petitioner maintains that, under the Information and the evidence adduced by the prosecution, she was charged and found guilty of violating Section 2505 of the TCC. She avers that the provision specifically refers to an arriving person, including airline crew, who brings in dutiable articles without declaring the same in the customs declaration, and that for failing to make such declaration or to mention the same verbally may result in the seizure of the baggage and articles, unless it can be satisfactorily explained that such failure was without fraud. She avers that the law specifically refers to "baggage declaration" and not to an import or export entry. In contrast, Section 3601 of the TCC covers importing or bringing into the country, in a fraudulent manner, any article, contrary to law, or one who assists in such criminal act or receives, conceals, brings or sells or, in any way, helps in the transportation, concealment or sale of such article, knowing the same to have been imported contrary to law. She insists that it refers to rampant smuggling in any port in the Philippines without the filing of an import or export entry, and is called "swing." Petitioner points out that the law does not speak of any entry or baggage declaration. Section 3601 is general in its scope, while Section 2505 is special and applies only to a criminal case following under it. The words "contrary to law" are descriptive of, and qualifies the word "article" and not to the manner of importation. In contrast, Section 3602 refers to the filing of a false entry.

Petitioner asserts that Sections 2505, 3601 and 3602 of the TCC are separate and distinct from one another, penalizing as they do different offenses of smuggling. She insists that the facts constituting the filing of one charge cannot interchangeably be held to constitute the crime under any of the other two provisions, as the laws cannot be mixed with one set of facts.

On the other hand, the CA ruled that under the Information, petitioner was charged of smuggling under Section 3601 of the TCC. She committed actual fraud when she brought into the country 20.1 kilograms of taxable assorted jewelries without declaring them to the Customs authorities as required by law. Worse, she expressly denied possession of said articles and hid them surreptitiously. That she later disclosed the existence of said jewelry or intended to pay their corresponding duties and taxes was merely an afterthought to avoid liability.

The appellate court also declared that petitioner was caught in flagrante delicto. When dutiable goods are omitted in a baggage declaration and the omission is not due to inadvertence or ignorance, it is deemed to be fraudulent. The appellate court declared that to warrant her acquittal, petitioner must prove that in carrying the subject jewelry, her act was innocent and done without intent to defraud. It further declared that petitioner could not stretch the phrase "contrary to law" as descriptive of the word "article" to exempt her from the illegal importation. It cited the ruling of the RTC that the law considers any person who, contrary to law, imports any article as guilty of smuggling without regard to whether the article itself is absolutely or qualifiedly prohibited. The CA declared that the crime sought to be punished by this law is the act of importing or bringing into the Philippines any article contrary to law; it does not concern itself with the nature of the article so imported or brought in.[65]

The CA maintained that petitioner's interpretation of Sections 2505 and 3602 of the law is untenable. It pointed out that Section 2505 speaks of "failure to declare baggage" which can be seized and be released only to its owner upon payment of the taxes and duties unless such failure was attended by fraud. On the other hand, Section 3602 lays down the various acts of importation, entry or exportation of articles considered as fraudulent. In short, Section 2505 pertains to compliance with a requirement in declaring a baggage, Section 3602 enumerates the fraudulent acts in smuggling, while Section 3601 prescribes the penalty therefor. The appellate court stated that these three provisions are harmonized into one interpretation and application befitting the circumstances in the case at bench.

For its part, respondent People of the Philippines, through the Office of the Solicitor General, avers that there is no question that petitioner brought into the country 20.1 kilograms of assorted gold jewelries which she placed inside three black leatherette envelopes and contained in the baggage she personally carried. What made the act punishable under Section 3601 of the TCC was her failure to declare the items in the Customs Declaration Form as required under Section 2505 of the TCC, thus, making petitioner's act contrary to law. In other words, the phrase "contrary to law" refers to the petitioner's act, and not to dutiable goods brought into the country.[66]

The Ruling of the Court

The petition has no merit.

The contention of petitioner that Section 2505 of the TCC defines a crime is not correct. Title No. VI, Part 4, Section 2505 of the TCC reads:

SEC. 2505. Failure to Declare Baggage. – Whenever any dutiable article is found in the baggage of any person arriving within the Philippines which is not included in the baggage declaration, such article shall be seized and the person in whose baggage it is found may obtain release of such article, if not imported contrary to any law, upon payment of treble and appraised value of such article plus all duties, taxes and other charges due thereon unless it shall be established to the satisfaction of the Collector that the failure to mention or declare said dutiable article was without fraud.

Nothing in this section shall preclude the bringing of criminal action against the offender.

A person arriving in the Philippines with baggages containing dutiable articles is bound to declare the same in all respects.[67] In order to meet the convenience of the travelers, a simple and more expeditious method of customs clearance is provided for baggages occupying the passage therein for goods imported in the regular manner.[68] Official entry forms and forms of baggage declaration are supplied to the passengers to be filled before the customs officer.[69] The traveler has the burden of carrying forward items that have to be declared before examination of the cargo has begun. Adequate reporting of dutiable merchandise being brought into the country is absolutely necessary to the enforcement of customs laws, and failure to comply with those requisites is as condemnable as failure to pay customs fees.[70]

The provision is Part 4 of Title VI, Section 2505, of the TCC which enumerates the administrative penalties in the form of surcharges, fines and forfeitures imposed by law on imported dutiable goods. It does not define a crime. It merely provides, inter alia, for the administrative remedies which can be resorted to by the Bureau of Customs when seizing the dutiable articles found in the baggage of any person arriving in the Philippines which is not included in the accomplished baggage declaration submitted to the customs authorities, and the administrative penalties that such person must pay for the release of such goods if not imported contrary to law. Any administrative penalty that may be imposed on the person arriving in the Philippines with undeclared dutiable articles is separate from and independent of the criminal liability for smuggling under Section 3601 of the TCC and for violation of other penal provisions in the TCC. The criminal liability of such person can only be determined in the appropriate criminal proceedings, prescinding from the outcome in any administrative case that may have been filed and disposed of by the customs authorities.[71] Indeed, the second paragraph of Section 2505 provides that nothing in this Section shall prevent the bringing of criminal action against the offender for smuggling under Section 3601 of the TCC.

Section 3601 of the TCC provides:

Sec. 3601. Unlawful Importation. – Any person who shall fraudulently import or bring into the Philippines, or assist in so doing, any article, contrary to law, or shall receive, conceal, buy, 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.

The last paragraph of said provision reads:

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

Smuggling is penalized as follows:

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

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

Thus, in contrast to Section 2505, Section 3601 of the TCC is a penal provision. It defines the crime of smuggling and provides compound penalties of graduated fine and imprisonment based on the appraised values of the imported articles to be determined in the manner provided in the TCC. There is no conflict between Section 2505 and Section 3601. In point of fact, the two sections and Section 3602 complement each other.

Section 3601 of the TCC was designed to supplement the existing provisions of the TCC against the means leading up to smuggling, which might render it beneficial by a substantive and criminal statement separately providing for the punishment of smuggling. The law was intended not to merge into one and the same offense all the many acts which are classified and punished by different penalties, penal or administrative, but to legislate against the overt act of smuggling itself. This is manifested by the use of the words "fraudulently" and "contrary to law" in the law.

Smuggling is committed by any person who: (1) fraudulently imports or brings into the Philippines any article

contrary to law; (2) assists in so doing any article contrary to law; or (3) receives, conceals, buys, sells or in any manner facilitate the transportation, concealment or sale of such goods after importation, knowing the same to have been imported contrary to law.[72]

The phrase "contrary to law" in Section 3601 qualifies the phrases "imports or brings into the Philippines" and "assists in so doing," and not the word "article." The law penalizes the importation of any merchandise in any manner contrary to law.[73]

The word "law" includes regulations having the force and effect of law, meaning substantive or legislative type rules as opposed to general statements of policy or rules of agency, organization, procedures or positions. An inherent characteristic of a substantive rule is one affecting individual rights and obligations; the regulation must have been promulgated pursuant to a congressional grant of quasi-legislative authority; the regulation must have been promulgated in conformity to with congressionally-imposed procedural requisites.[74]

Importation consists of bringing an article into the country from the outside.[75] The crime of unlawful importation is complete, in the absence of a bona fide intent to make entry and pay duties when the prohibited article enters Philippine territory.[76] Importation is complete when the taxable, dutiable commodity is brought within the limits of the port of entry. Entry through a customs house is not the essence of the act.[77]

Section 3602 of the TCC, on the other hand, provides:

Sec. 3602. Various Fraudulent Practices Against Customs Revenue. – Any person who makes or attempts to make any entry of imported or exported article by means of any false or fraudulent invoice, declaration, affidavit, letter, paper or by any means of any false statement, written or verbal, or by any means of any false or fraudulent practice whatsoever, or knowingly effects any entry of goods, wares or merchandise, at less than the true weight or measures thereof or upon a false classification as to quality or value, or by the payment of less than the amount legally due, or knowingly and wilfully files any false or fraudulent entry or claim for the payment of drawback or refund of duties upon the exportation of merchandise, or makes or files any affidavit, abstract, record, certificate or other document, with a view to securing the payment to himself or others of any drawback, allowance or refund of duties on the exportation of merchandise, greater than that legally due thereon, or who shall be guilty of any wilful act or omission shall, for each offense, be punished in accordance with the penalties prescribed in the preceding section.

The provision enumerates the various fraudulent practices against customs revenue, such as the entry of imported or exported articles by means of any false or fraudulent invoice, statement or practice; the entry of goods at less than the true weight or measure; or the filing of any false or fraudulent entry for the payment of drawback or refund of duties.

The fraud contemplated by law must be intentional fraud, consisting of deception, willfully and deliberately dared or resorted to in order to give up some right.[78] The offender must have acted knowingly and with the specific intent to deceive for the purpose of causing financial loss to another; even false representations or statements or omissions of material facts come within fraudulent intent.[79] The fraud envisaged in the law includes the suppression of a material fact which a party is bound in good faith to disclose. Fraudulent nondisclosure and fraudulent concealment are of the same genre.[80]

Fraudulent concealment presupposes a duty to disclose the truth and that disclosure was not made when opportunity to speak and inform was present, and that the party to whom the duty of disclosure as to a material fact was due was thereby induced to act to his injury.[81] Fraud is not confined to words or positive assertions; it may consist as well of deeds, acts or artifice of a nature calculated to mislead another and thus allow one to obtain an undue advantage.

The term "entry" in Customs law has a triple meaning. It means (1) the documents filed at the Customs house; (2) the submission and acceptance of the documents; and (3) the procedure of passing goods through the Customs house.[82] Customs declaration forms or customs entry forms required to be accomplished by passengers of incoming vessels or passenger planes are envisaged in the section.

There is thus no conflict between Sections 2505, 3601 and 3602 of the TCC. In point of fact, the three provisions complement each other.

The bare fact that, under the second paragraph of the Information, petitioner is alleged to have imported the jewelry into the country by, inter alia, not declaring it in the customs declaration form, it cannot thereby be concluded that she was being charged of a crime under Section 2505 of the TCC. The acts alleged therein are descriptive of the fraudulent manner petitioner imported her jewelries into the country. Petitioner was mandated to indicate in the Customs Declaration Form that she had jewelry in her possession to be imported into the country valued at more than US\$350.00. Worse, when asked by Nario if she had goods or articles to declare, she spontaneously answered "No." Petitioner's intentional concealment or nondisclosure that she had such jewelry items in the leatherette bags constituted fraud under Sections 3601 and 3602 of the TCC, aimed at depriving the government of customs revenue.

Insisting on her acquittal, petitioner asserts that the People failed to prove her guilt for smuggling beyond reasonable doubt because she readily admitted to Nario that the first leatherette envelope contained jewelry even before its lining was opened, and that she also admitted to Raïg½ada that her hanger bag contained jewelry before Nario discovered the said items. Petitioner maintains that her contention is buttressed by the affidavit of Nario,[83] the February 28, 1997 Memorandum of Cabugao to the District Commander,[84] and the affidavit executed by Raïg½ada.[85]

We are not persuaded. The rule is that in all criminal prosecutions, the prosecution is burdened to prove the guilt of the accused beyond reasonable doubt. In this case, the burden of the prosecution was complied with, as it was able to prove that petitioner possessed the jewelry in question when Nario examined her luggage. Under the last paragraph of Section 3601 of the TCC, such evidence shall be deemed sufficient evidence to authorize conviction. The burden was then shifted to petitioner, the accused below, to explain her possession to the satisfaction of the court. The last paragraph of Section 3601 reads:

When, upon trial for violation of this section, the defendant is shown to have had possession of the article in question, possession shall be deemed sufficient evidence to authorize conviction unless the defendant shall explain the possession to the satisfaction of the court: Provided, however, That payment of the tax due after apprehension shall not constitute a valid defense in any prosecution under this section.[86]

Petitioner admitted her possession of the jewelries and that she brought the same from Singapore. She declared that she and her business partner Albert acquired the same for their business. The trial court did not believe her claim of having spontaneously informed Nario that she had jewelries in her handbag, and ruled that, contrary to law, she fraudulently imported the jewelries into the country. Thus, the trial court found her guilty as charged, with its illuminating findings and encompassing ratiocinations which we find are based on the evidence on record:

But the incriminating evidence that tops them all is the manner the accused attempted to smuggle her jewelry to this country. Accused testified that it was she herself who placed and arranged the jewelry inside three leatherette bags, which she placed inside her hanger bag. Nario showed this court just exactly how the accused arranged her things inside her hanger bag when she inspected it. The jewelry was securely hidden in a place not meant to be seen by anybody but the accused.

The hanger bag was stuff[ed] with accused's clothing. But it has pockets in the interior the contents of which

are not visible to the eyes unless the pockets, which are secured shut by zippers are opened. When the pockets were unzipped only then did the three black leatherette envelopes come to view. When one of the leatherette envelopes was removed from one of the pockets and opened, the viewer is given the impression that all that it contained were commercial brochures as nothing else can be seen, if the viewer is merely content with using her sense of sight. Even after all the brochures are removed from the envelope, the viewer sees only an empty space, if she uses only sight. But the brochures turned out to be mere decoys to lull the viewer into believing that there is nothing more to see and the inspection should stop at that point. But Nario, the inspector, did not only use her sense of sight. She noticed that even after the envelope was emptied of its contents, it was still heavy and she felt something bulging ("matambok") beneath the synthetic fabric that serves as its lining. She looked for a gap in the lining by tracing its borders with her hands until she came upon a part where the stitches were undone or deliberately broken, thereby creating a secret pocket. She slipped her hand into the secret pocket to retrieve the bulging thing that was hidden in it. This bulging thing turned out to be objects wrapped in a sturdy light brown paper flattened out by pressure. When the wrapper was opened, pieces of gold jewelry came into view. The two other leatherette bags yielded one pack of gold jewelry each. Both packs were securely hidden in exactly the same manner as the first. Alma Duplito, a Customs appraiser, appraised the dutiable value of the jewelry at P4,598,000.00 and the total taxes and duties at P2,379,021.02.

The ingenuity with which accused tried to conceal from view her jewelry shattered all her pretensions of having declared or even just an intention to declare them for proper assessment of the corresponding customs duties and taxes. On the contrary, her stacking the envelope with worthless commercial brochures as decoys to confuse or divert the attention of the Customs inspectors and her deliberate breaking of the stitches of the lining of the bags to create a secret pocket in which to hide and conceal from view her jewelry are unmistakable badges of an intention to spirit them away into this country in violation of its customs and tariffs law. In this sense, it is a direct evidence of the crime of smuggling. xxx[87]

As gleaned from his decision, the Presiding Judge of the trial court was able to observe, at close range, the demeanor and conduct of Nario when she testified. He was convinced of her honesty and found her testimony credible:

Nario impresses this court as an honest witness compared with the manner accused testified. Thus, this court finds it easy to believe Nario's steadfast testimony that accused did not declare her jewelry, than accused's claim that she did. Besides, credence to the narration of the incident and presumption of regularity in the performance of duty are given to public officers in the absence of contrary evidence (see *People vs. Marcos*, 212 SCRA 748).[88]

xxx

No witness who came forward to testify is in a better position to state what the accused did than Estelita Nario. Accused herself declared that it was Nario who checked her baggages. Nario testified that the first thing she did when accused presented to her baggage for inspection was to ask her if she has anything to declare, and accused said "No." She noted that accused's response tallied with her Customs Baggage Declaration (Exh. "F"). There was not an instance prior to the discovery of the jewelry, Nario stressed, that the accused declared before her, even verbally, that she had jewelry items with her.[89]

In contrast, the trial court gave no credence and probative weight to petitioner's testimony and her claim that she divulged to Nario, Fuentebella, Cabugao and Rañada that she was carrying dutiable jewelry before Nario examined her handbag:

Accused cannot take refuge under Cabugao's Memorandum (Exh. "1") which tends to show that a certain SA I Antonio Fuentebella allegedly revealed that accused admitted that she was carrying taxable items. This evidence is hearsay because Cabugao gathered this piece of information from Fuentebella who did not testify. Besides, Cabugao clarified that it was Nario, the examiner, who had direct contact with the accused, not he or

Fuentebella. When he investigated Nario on March 1, 1997, she told him, "Inamin na pagkatapos buksan ang bagahe."

If accused really declared the jewelry she was bringing to the Customs inspectors, there would have been no fuss over it and that day would have passed, for her and the customs people, uneventfully. But the ensuing scene as she herself described after her baggage was inspected belies her claim. Several media reporters took interest in the conduct of the inspection of her baggage. Later, Atty. Lourdes Mangaoang, who is the Chief of the Legal Investigation Unit, even Customs Deputy Collector for Passenger Services Rodolfo Buendia, were called in to get a piece of the action. The furor that her jewelry generated even prompted Atty. Mangaoang and the Customs people to hide her from the press and prevented from being photographed by them. This certainly could not be the scene when a passenger is caught smuggling highly dutiable items. Everybody seems interested to dip their hands and try to get a piece of the pie.[90]

The CA affirmed the trial court's findings on appeal, as well as its calibration of the testimony of the witnesses. Jurisprudence has it that the findings of facts of the trial court, which the CA affirmed on appeal, are conclusive on this Court unless it can be shown that cogent facts and circumstances of substance were misunderstood or misinterpreted which, if considered, would alter or reverse the outcome of the case.[91] Indeed, as aptly stated by the Supreme Court of Missouri in *Creamer v. Bivert*:[92]

xxx We well know there are things of pith that cannot be preserved in or shown by the written page of a bill of exceptions. Truth does not always stalk bodily forth naked, but modest withal, in a printed abstract in a court of last resort. She oft hides in nooks and crannies visible only to the mind's eye of the judge who tries the case. To him appears the furtive glance, the blush of conscious shame, the hesitation, the sincere or the flippant or sneering tone, the heat, the calmness, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien. The brazen face of the liar, the glibness of the schooled witness in reciting a lesson, or the itching overeagerness of the swift witness, as well as honest face of the truthful one, are alone seen by him. In short, one witness may give testimony that reads in print, here, as if falling from the lips of an angel of light, and yet not a soul who heard it, nisi, believed a word of it; and another witness may testify so that it reads brokenly and obscurely in print, and yet there was that about the witness that carried conviction of truth to every soul who heard him testify. Therefore, where an issue in equity rests alone on the credibility of witnesses, the upper court may with entire propriety rest somewhat on the superior advantage of the lower court in determining a fact. xxx[93]

If petitioner had no intention to fraudulently import the jewelries and defraud the government of the duties/taxes due thereon, she should have indicated in the Customs Declaration Form that she was carrying jewelries valued at more than US\$350.00, and accomplished the Customs Entry Form. Petitioner failed to do so. She even deliberately concealed her possession of the jewelries, and told Nario that she had nothing to declare. Even as petitioner realized that the discovery of the jewelry items was inevitable, she merely requested Nario to continue with her examination of the leatherette envelopes in the examination room, beyond the prying eyes of the media. In fine, petitioner was more concerned with her exposure to the media than her liabilities for violation of the TCC; such was her mindset.

Petitioner cannot evade criminal liability for her claim that when Nario was about to unzip the leatherette envelopes and discover the jewelries contained therein, she told Nario and Rañada that she imported jewelries. Petitioner made her revelation to avoid being embarrassed, as there were media in the area where Nario and Rañada discovered that she had imported the jewelries which she did not declare in the Customs Declaration Form. To paraphrase Justice Oliver Wendell Holmes, petitioner cannot get rid of the duty of declaring the jewelries to the customs examiner by hiding the jewelries in the leatherette envelopes covered by brochures and beneath the lining of the envelopes. She cannot purge herself of the consequences of her fraud even by confessing when she saw that she was on the point of being discovered or, as might have been found, after she had been.[94]

Neither can petitioner rely on the memorandum of Cabugao to the Customs District Commander on February 28, 1997, to wit:

Initial investigation showed that when SA I Antonio Fuentebella asked from crew members if they have anything to declare, a crew member later known [as] Maribel B. Jardeleza admitted that she was carrying taxable items, and asked that they proceed to the Baggage extension room.

Examination was therefore conducted by Customs Examiner Estelita Nario and found inside three (3) leatherette envelopes approximately 20.1 kgs. [of] Assorted Jewelry.[95]

It must be stressed that petitioner failed to present Fuentebella as her witness. The information allegedly relayed by Fuentebella to Cabugao is thus hearsay evidence, barren of probative weight. Moreover, Fuentebella alleged the following in his affidavit:

That, I am employed as Special Agent I at the Bureau of Customs, and presently assigned at the Arrival Area, as Team Leader, X-Ray Operations;

That, on February 27, 1997, an Alert Order was issued by the District Commander, directing us to monitor an alleged courier of assorted jewelry on board flight PR-502 which came from Singapore;

That, X-Ray operations were conducted on baggage from flight PR-502, but proved negative. At the same time, surveillance operations were conducted on all passengers and flight crew members;

That, Ms. Maribel Jardeleza, PAL flight stewardess approached Customs Examiner Estelita Nario for the usual examination of her baggages;

That, during the process of examination, Ms. Nario found black envelopes inside the lining of the hanger bag of Ms. Jardeleza, hence, the examination was transferred to the interview room for rigid examination;

That, found inside Ms. Maribel Jardeleza's baggage were assorted jewelry, placed inside three (3) black leatherette envelopes weighing more or less 20.1 kgs. (Gross).[96]

According to Nario, she sought the assistance of Fuentebella and Rañada to bring petitioner's hanger bag to the examination room only after petitioner requested her to continue the search of her belongings inside the examination room to avoid embarrassment.[97]

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED for lack of merit. Costs against petitioner.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Austria-Martinez and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Romeo A. Brawner (retired) and Mariano C. Del Castillo, concurring; rollo, pp. 37-54.

[2] Records, pp. 1-2.

[3]Exhibit "B," id. at 239.

[4]Exhibit "C," id. at 241.

[5] Exhibit "B," supra.

[6]TSN, October 1, 1999, pp. 29-30.

[7]Exhibit "I."

- [8] TSN, October 13, 1999, p. 13.
- [9] Id. at 14.
- [10] Id. at 45.
- [11] Exhibit "F," records, pp. 246-247.
- [12] TSN, August 25, 1999, p. 21.
- [13] Id. at 22.
- [14] Id. at 25.
- [15] Exhibits. "K," "L" and "M."
- [16] TSN, August 25, 1999, pp. 26, 32.
- [17] Id. at 32.
- [18] Id. at 32-33.
- [19] Id. at 34-35.
- [20] Id. at 37.
- [21] Exhibits "A" to "A-4," records, pp. 237-238.
- [22] Exhibits "K," "L" and "M."
- [23] TSN, August 25, 1999, pp. 42-43.
- [24] Exhibit "L."
- [25] Exhibit "M."
- [26] TSN, August 25, 1999, p. 73.
- [27] Exhibit "G," records, p. 248.
- [28] Id.
- [29] Exhibit "P," records, p. 252.
- [30] Exhibit "O," id. at 250-251.
- [31] TSN, February 9, 2000, pp. 75-76.
- [32] Exhibit "O," records, pp. 250-251.
- [33] Exhibit "D," id. at 242-243.
- [34] TSN, November 8, 2000, pp. 5-6.
- [35] Id. at 6.
- [36] TSN, November 10, 2000, p. 4.
- [37] Id. at 3-8.
- [38] TSN, November 8, 2000, p. 6.

- [39] Id. at 7.
- [40] Id. at 8, 10.
- [41] Id. at 7.
- [42] Id.
- [43] Id. at 8.
- [44] Id.
- [45] Id. at 9.
- [46] Exhibit "A," records, p. 237.
- [47] TSN, November 8, 2000, p. 11.
- [48] Id. at 12.
- [49] Id. at 12-13.
- [50] Id. at 13-14.
- [51] Id. at 14.
- [52] Exhibit "19," records, p. 363.
- [53] TSN, November 8, 2000, p. 14.
- [54] Exhibit "1," records, p. 342.
- [55] Exhibit "8," id. at 348.
- [56] Exhibit "11," id. at 351.
- [57] TSN, March 3, 2000, pp. 6-7.
- [58] Id. at 9.
- [59] TSN, October 27, 1999.
- [60] Id.
- [61] Id. at 31-39.
- [62] Id.
- [63] Records, p. 397.
- [64] Rollo, pp. 41-43.
- [65] Id. at 47.
- [66] Id. at 170.
- [67] United States v. 218 ½ Carats Loose Emeralds, 153 F. 643 (1907).
- [68] 25 C.J.S. Customs Duties, p. 251.
- [69] The Robert Edwards, 19 U.S. 187, 5 L.Ed. 238 (1821)

- [70] Walkup v. Interborough Rapid Transit Co., 22 F.2d 266 (1927).
- [71] People v. CFI of Rizal, Br. IX, G.R. No. L-41686, November 17, 1980, 101 SCRA 86.
- [72] Rodriguez v. Court of Appeals, G.R. No. 115218, September 18, 1995, 248 SCRA 288, 296.
- [73] United States v. Mitchell, 39 F.3d 465 (1994).
- [74] Id.
- [75] Cunard S.S.Co. v. Mellon, 43 S.Ct. 504, 67 L.Ed. 894 (1923).
- [76] Tomplain v. United States, 42 F.2d 203 (1930).
- [77] Id.
- [78] Remigio v. Sandiganbayan, G.R. Nos. 145422-23, January 18, 2002, 374 SCRA 114, 123.
- [79] United States v. Yip, 930 F.2d 142 (1991).
- [80] Id.
- [81] Guinhawa v. People, G.R. No. 162822, August 25, 2005.
- [82] Rodriguez v. Court of Appeals, supra, at 297.
- [83] Exhibit "2," records, p. 242.
- [84] Exhibit "1," id. at 342.
- [85] Exhibit "3," id. at 343.
- [86] Section 3601 of the Tariffs and Customs Code of the Philippines.
- [87] Rollo, pp. 136-137.
- [88] Id. at 136.
- [89] Id. at 135.
- [90] Id. at 136.
- [91] People v. Continente, G.R. Nos. 100801-02, August 25, 2000, 339 SCRA 1; People v. Restoles, G.R. No. 112692, August 25, 2000, 339 SCRA 40; People v. Lacson, G.R. No. 126174, August 29, 2000, 339 SCRA 178; People v. Gutierrez, G.R. No. 132772, August 31, 2000, 339 SCRA 452; People v. Dizon, G.R. No. 131506, September 6, 2000, 339 SCRA 740.
- [92] 113 S.W. 1118 (1908).**
- [93] Id. at 3-4.
- [94] United States v. Ritterman, 47 S.Ct. 371; 71 L.ed. 636 (1927).
- [95] Exhibit "1," records, p. 342.
- [96] Exhibit "C," id. at 345.
- [97] TSN, October 1, 1999, pp. 71-72.

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