RENE M. FRANCISCO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 177430. July 14, 2009

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Assailed before Us is the Decision[2] of the Court of Appeals dated 13 April 2007 in CA-G.R. CR No. 28025 which affirmed in toto the Decision[3] dated 16 July 2003 of the Regional Trial Court (RTC) of Manila, Branch 21, in Criminal Case No. 00-186411, and its Resolution[4] dated 6 July 2007 denying petitioner Oscar A. Ojeda's Motion for Reconsideration.

In an Information dated 12 September 2000, Ruel "Jayar" Tolentino, Oscar A. Ojeda, Rene M. Francisco, Danilo J. Lintag, Antonio Caamic, Michael Umagat, Amado Gonzales and Police Officer 3 (PO3) Roberto Nadora were charged before the RTC of Manila with violation of Section 3601 of the Tariff and Customs Code of the Philippines. The case was docketed as Criminal Case No. 00-186411 and was raffled to Branch 21. The Information reads:

> That on or about November 18, 1999, in the City of Manila and within the jurisdiction of this Honorable Court, all the above-named accused, with evident intent to defraud the government of legitimate taxes accruing to it from imported articles, did then and there, willfully, unlawfully and knowingly participate in and facilitate the transportation, concealment, and possession of dutiable electronic equipment and accessories with a domestic market value of P20,000,000.00 contained in container van no. TTNU9201241, but which were declared in Formal Entry and Revenue Declaration No. 118302 as assorted men's and ladies' accessories, all of said accused knowing the same to have been imported contrary to law, to the damage and prejudice of the Philippine Government.[5]

On 16 October 2000, orders for the arrest of the accused were issued by the trial court.[6] Tolentino, Francisco, Lintag, PO3 Nadora and Ojeda were granted provisional liberty after filing their respective personal bail bonds.

On 6 December 2000, when arraigned, Tolentino, Francisco, Lintag and PO3 Nadora, assisted by their respective counsels de parte, pleaded not guilty to the crime charged.[7] Assisted by counsel, Ojeda pleaded not guilty when arraigned on 28 February 2001.[8] Accused Caamic, Umagat and Gonzales remained at large.

The pre-trial conference was conducted and terminated on 17 April 2001.[9] Thereafter, trial on the merits ensued.

The prosecution presented the following witnesses: (1) Lt. Julius Agdeppa,[10] member of Presidential Anti-Smuggling Task Force (PASTF) Aduana; (2) Atty. Eden Dandal,[11] Special Assistant to the Director of Customs Intelligence and Investigation Service (CIIS); and (3) Zenaida Lanaria,[12] Acting Chief, Liquidation and Billing Division, Bureau of Customs (BOC).

The evidence for the prosecution shows:

On 18 November 1999, the PASTF Aduana received intelligence information that a container van with No. TTNU 9201241 containing electronic appliances on board a trailer truck with Plate No. GDW 833 would be released from the Manila International Container Port (MICP) without payment of the required customs duties and taxes. At around 3:45 p.m. of the same date, the PASTF Aduana led by Lt. Julius Agdeppa, together with five of its members (Sgt. Marvida, Sgt. Narag, Sgt. Azarcon, Sgt. Segismundo and Sgt. Alcid), spotted the said truck with container van leaving the MICP compound. The team tailed the truck and upon reaching the South Superhighway, Lt. Agdeppa's vehicle overtook the truck and ordered the driver to pull over. When the driver pulled over, Lt. Agdeppa and Sgt. Marvida approached it and asked the truck driver (Amado Gonzales) to show the documents of the cargo. Gonzales presented only photocopies of the Formal Entry, Internal Revenue Declaration No. 118302[13] and Invoice No. LPI/99-500.[14] Meanwhile, Michael Umagat, the driver of a white Honda Civic following the truck, approached them and asked what the problem was. Umagat said, "Pare, ano problema nyan? May problema ba yan?" After Lt. Agdeppa identified himself, he asked Umagat who the owner of the cargo was. Umagat said, "Pare kay Ruel Tolentino, okey na yan kay Danilo Lintag."[15] When Lt. Agdeppa inquired about the destination of the cargo, Umagat pointed to PO3 Nadora who was on board a stainless-type jeep and said, "Siya ang escort, siya ang nakakaalam kung saan pupunta yan, sir."[16] PO3 Nadora told them he did not know the destination of the cargo. Suspecting there was something illegal about the cargo considering that the items mentioned in the entry (men's and ladies' accessories) were different from those enumerated in the invoice (VHS, Betamax, etc.), and that the taxes paid were not commensurate with the size of the container van, Lt. Agdeppa told Gonzales, Umagat and PO3 Nadora to follow them to Warehouse No. 16, Camp Aguinaldo, Quezon City where the cargo would be subjected to examination. The photocopies of the entry declaration and the invoice were taken by Lt. Agdeppa as part of evidence and as basis for the inventory.

On 20 November 1999, the opening of the container van was witnessed by, among other persons, Atty. Eden Dandal, CIIS MICP Chief, Rene Francisco, Gen. Calimlim, Head of PASTF Aduana, and the media.[17] The container van contained dutiable assorted electronic equipment and appliances as mentioned in Invoice No. LPI/99-500, contrary to the 450 cartons of assorted men's and ladies' accessories declared in the Formal Entry and Internal Revenue Declaration No. 118302.[18] Invoice No. LPI/99-500[19] enumerates the following items:

QUANTITY

DESCRIPTION

UNIT PRICE

AMOUNT

51 grs.

Shirt

@US$0.20/grs.

US$10.20

50 grs.

Blouse

0.20/grs.

10.00

100 sets

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Television

0.30/set

30.00

29 grs.

Dress

0.40/grs.

11.60

30 grs.

Jacket

0.50/grs.

15.00

80 sets

Vcd

0.20/set

16.00

30 grs.

Jumper

0.50/grs.

15.00

150 sets

Vhs

0.238/set

35.70

30 grs.

Skirt

0.40/grs.

12.00

1000 grs.

blank tape

0.05/grs.

50.00

40 grs.

Sandals

0.20/grs.

8.00

20 grs.

Bags

0.50/grs.

10.00

30 sets

Components

0.40/grs.

12.00

40 grs.

Tights

0.30/grs.

12.00

100 sets

Fishing rods

2.50/set

250.00
US$497.50[20]

The Formal Entry and Internal Revenue Declaration contained, among other things, the following entries: Exporter: PAWA Brothers Trading PTE, Ltd.; Importer: Loxon Phils., Inc. #33 Taguig St., Makati City, Philippines; Broker/Attorney-in-Fact: A&N Brokerage Services; Number and Kind of Packages: 450 Cartons: Assorted Men's and Ladies' Accessories, etc.; Container Van No. TTNU 9201241: the weight, which was voluntarily upgraded to 1,350%; Customs' value: US$3,588.75; Dutiable value: P158,768.57; Total assessment: P81,939.00.[21] The itemized contents of the container van were enumerated in the inventory sheet[22] prepared by PO1 Nestor Marvida, to which Atty. Eden Dandal and Lt. Agdeppa agreed.

Per certification issued by Stanley N. Villavicencio of the Valuation and Classification Division of the Bureau of Customs, the domestic market value of the assorted electronic equipment contained in the container van consigned to Loxon Phil., Inc. is P20,000,000.00.[23] Formal Entry and Internal Revenue Declaration No. 118302 was assigned by Customs Operations Officer 5 (COO5) Oscar Ojeda to Customs Operations Officer 3 (COO3) Rene Francisco for examination. Francisco recommended its continuous processing without actual examination of the cargo, which Oscar Ojeda concurred in. The entry with the attached clearance from the CIIS monitoring team headed by Danilo Lintag was forwarded to the cash division for payment. For allegedly facilitating the release of said cargo, the three customs personnel were charged with violation of Section 3601 of the Tariff and Customs

Code of the Philippines.

Atty. Dandal testified that he knew Oscar Ojeda, Danilo J. Lintag and Rene M. Francisco, they being his co-workers at the Bureau of Customs. He did not know PO3 Roberto Nadora. He disclosed that he received a call from Gen. Calimlim of the PASTF Aduana requesting him to witness the 100% examination of apprehended goods covered by Formal Entry and Internal Revenue Declaration No. 118302 and consigned to Loxon Phils., Inc. He revealed that cargoes described as general merchandise, those with alert orders and those coming from China, Hongkong, Thailand and Singapore were usually subjected to 100% examination. He said the persons authorized to issue alert orders and orders for 100% examination were the Director of CIIS, the Director of Enforcement and Security Service, and the District Collector. With respect to the cargo involved in this case which came from Singapore, there was no request from the foregoing persons to subject the same to 100% examination.

Atty. Dandal explained that the Bureau of Customs adopted a selectivity system called the ASYCUDA (Automated System for Customs Data) Program to determine if the cargo was to be subjected to 100% examination. In said program, entries are classified into three lanes: (1) the green color lane, where the entry is forwarded to the cash division for payment and immediate release of cargo; (2) the yellow color lane, where only verification of documents is done by the examiner; and (3) the red color lane, where the goods are subjected to 100% examination. He said that the cargo involved was categorized as yellow, which means that document-only verification is required. It is the Assessment Section that reviews documents falling on the yellow lane. He explained that there are instances when entries classified as yellow are subjected to 100% examination, such as (1) when there is an Alert Order; or (2) when the value of the particular shipment is "hit," which means that the valuation is under question, and when the declarations on the entry and the supporting documents themselves contradict each other.[24] In these instances, the appraiser may either increase the valuation or conduct a re-computation of the duties and taxes to be paid or secure sample for valuation purposes. He added that it is impossible for a fraudulent entry to pass the bureau without passing the intelligence detachment assigned to each district, unless there is some sort of conspiracy. He revealed that Oscar Ojeda belonged to the Assessment Office where importation documents mandatorily passed.

Atty. Dandal said he found "striking" and "peculiar" the entries made in the documents regarding the subject cargo. The Formal Entry and Internal Revenue Declaration No. 118302 merely described the cargo as 450 cartons of assorted men's and ladies' accessories. It did not state the weight as is normally indicated in the Bill of Lading, invoice and packing list. He said that the weight of the shipment mentioned in the Bill of Lading (3,500 kg or 3.5 tons) was excessive for 450 cartons of men's and ladies' accessories. He likewise said that the quantity and valuation in the import declaration was very peculiar. He explained that there was no way to determine the number of pieces of each men's and ladies' accessories and the unit price of each. He found it almost impossible also that the value of the containerized importation was only US$500.00. With all the electronic equipment and appliances (30 sets of components worth only US$12.00, 150 sets of VHS worth only US$35.00, and 100 sets of TV worth only US$30.00) declared in the invoice, the importation should not only be subjected to 100% examination, but should be alerted and the processing stopped by the examiners. The persons who acted on the particular entry were COO3 R.M. Francisco, COO5 A. Ojeda, and Felicitacion de Luz, Acting District Collector.

Atty. Dandal explained that Oscar Ojeda, as COO5, received the findings of the examiner/appraiser. The COO5 or the principal examiner may also request a 100% examination of the cargo. In the cargo subject of this case, the assessment was based merely on the documents, because when the entry was transmitted to the Entry Encoding Center, yellow appeared as the color code. Thus, Ojeda merely reviewed the supporting documents. He added that the principal examiner could have upgraded the valuation if the value was very low, and determined if the documents were properly classified. In the subject importation, there was voluntary upgrading (of the value of the

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importation) to 1,350%. Ojeda made an adjustment from P39,000.00 to P159,000.00. He said Danilo Lintag, who was assigned with the Office of the Deputy Commissioner, had no authority to conduct 100% examination. The goods, subject matter of the case, were, according to him, absolutely misdeclared and claimed to be men's and ladies' accessories.

Zenaida Lanaria testified that in November 1999, she was the Assistant Chief of the Liquidation and Billing Division of the BOC. She explained that the Liquidation and Billing Division was part of the processing of importations. She said that importation documents should pass her office. As regards Formal Entry and Internal Revenue Declaration No. 118302, she said that this document only passed the Collection Division and never reached her division. She did not know why this happened. It was only when she was subpoenaed by the court that she learned of it.

For the defense, the following took the stand: (1) PO3 Roberto Nadora,[25] assigned at Jose Abad Santos Avenue Police Station 7, Western Police District; (2) Danilo J. Lintag, Customs Agent, BOC;[26] (3) Oscar Ojeda, Customs Examiner, BOC;[27] (4) Ruel Tolentino, businessman and resident of Taguig, Metro Manila;[28] (5) Atty. Domingo Leguiab, Assistant Chief, Appellate Division, Legal Service, Office of the Commissioner, BOC;[29] (6) Manuel Oktubre, businessman and resident of Malabon, Metro Manila;[30] and (7) Renato M. Francisco, Acting Customs Operations Officer 3 (COO3), Special Warehousing Assessment Unit, BOC.[31]

PO3 Nadora denied the charge against him. He testified that on 18 November 1999, he was assigned at the Mobile Patrol Support Unit. On said day, he reported for work at 7:00 a.m. and went home at 4:00 p.m. On his way home, he saw Michael Umagat and Amado Gonzales, who asked for his assistance. They told him that their container van was missing so he helped them look for it. They located the container van inside Camp Aguinaldo in the warehouse of Task Force Aduana. He inquired from the person in authority why the container van was there. Instead of being given a reply, he was accused of escorting the container van.

Mr. Lintag denied participating in the crime charged. He testified that as a Customs Agent, it was his duty to supervise and review all port entries made by agents, to submit a report with proper recommendation, and to analyze reports of agents regarding violations of the Tariff and Customs Code and the rules and regulations pertaining thereto. It was also his duty to conduct and witness a 100% examination of shipments consigned to or handled by certain individuals regardless of whether they were classified as green, yellow or red under the ASYCUDA Program.[32]

At around 3:45 p.m. of 18 November 1999, he was in his office. He did not order a 100% examination of Container Van No. TTNU9201241 covered by Formal Entry and Internal Revenue Declaration No. 118302[33] and Invoice No. LPI/99-500, because there was no notice from the agents. He had no knowledge about Formal Entry and Internal Revenue Declaration No. 118302, because not a single document related to it passed his office. He also did not sign any document regarding the same. He denied that the signature appearing on Exhibit M was his. He likewise denied that shipments passed through the CIIS Monitoring Teams created by former BOC Commissioner Nelson Tan.[34]

Oscar Ojeda, denying the charge against him, testified that on 18 November 1999, he was Acting Principal Examiner at the MICP, BOC. As such, it was his duty to review the importation documents (Consumption Entry) and the findings of his examiner. He recalled having reviewed the documents of the shipment consigned to Loxon Phils., Inc. covered by Formal Entry and Internal Revenue Declaration No. 118302. The documents for said shipment were forwarded to his division by the Entry Processing Division (Marine Division). Upon receipt thereof, the same was given to the principal examiner for assignment to the examiner. For this cargo, he said he assigned the documents to Rene Francisco. It is standard operating procedure for the examiner to enter the

documents in the computer for registration and to enter the necessary findings on the contents of the documents. When the documents were returned to him by Francisco, he found them to be in order. All the supporting documents were attached. Ojeda said he did not find any discrepancy. He did not conduct (physical) examination of this particular cargo, but only reviewed the documents. Having been categorized as yellow, the cargo would be examined by the examiner based on documents and not by actual physical examination. He did not receive any order from his superior to examine physically the cargo, subject matter of this case. He said that he did not see the name of Rene Francisco in any document passed to him, and that he was not aware of the ownership of the importation.

As a former examiner/appraiser for thirteen years prior to his appointment as principal appraiser, Ojeda said he was very familiar with the duties of an examiner. It is part of an examiner's job to examine documents covering importations and the actual objects imported. Even without the superior's permission, an examiner can conduct actual or physical examination. It is the initiative of the examiner to perform actual examination if he finds it necessary in the face of the document, even if there is no alert order. Ojeda claimed that the principal examiner could not perform an actual examination unlike the examiner. He further explained that once the principal examiner affixed his signature approving all the documents that had been recommended by the examiner, the responsibility for the documents would be assumed by the principal examiner.

Ojeda said he found the contents and their values, as well as the total worth of the importation, to be unusual. Despite all these, he did not conduct 100% examination because there was a voluntary upgrading by the importer. The value of the invoice was upgraded by 1,350%.

When confronted with his counter-affidavit, he admitted that the following was stated therein: "In fact, Mr. Danilo Lintag even affixed his signature on his report and attached the same to the other pertinent documents as a sign of clearance on his part." He said that when the clearance reached his table, the signatures of his examiner and of Lintag were already there.

Mr. Ruel Tolentino denied any participation in the alleged smuggling and said that he had no intention to defraud the government. He testified that he was a licensed cargo forwarder (Jara Cargo Forwarders). As such, he hauled cargo from any place in Metro Manila to any point in Luzon. He said he was not the "Jayar" mentioned in the information and had never used said name. He claimed he had no participation in the importation, subject of this case. He did not participate in the processing or release of the cargo involved. He admitted, however, that he sent a letter dated 7 December 1999 to the Collector of the BOC offering to redeem the merchandise, there being already a Warrant of Seizure and Detention over the goods. Not being the importer or broker of the cargo, he made the offer to redeem, because a certain Paolo Gonzales, the holder of the original Bill of Lading of the seized goods, approached him and asked for his help in formally making the offer of redemption of the forfeited goods. Paolo Gonzales gave him a Special Power of Attorney, and he wrote the letter making a formal offer to redeem the seized articles. The offer was approved by the Chief of the Law Division and indorsed to the Collector of Customs. He claimed that he was included in the complaint because of his letter making the offer to redeem.

Mr. Tolentino explained that his only evidence that Loxon Phils., Inc. was existing was what Paolo Gonzales told him. He added that if the cargo would be released, Paolo Gonzales would give him 2% of the redemption value.

Atty. Domingo Leguiab testified on the events that happened involving the supposed shipment of Loxon Phils., Inc. He said the shipment was placed under Warrant of Seizure and Detention on 23 November 1999 because it was misdeclared pursuant to Republic Act No. 7651 without subjecting the shipment for hearing. The shipment was forfeited in favor of the government also on 23 November 1999. Under Section 2307 of the Tariff and Customs Code, the importer has the right to redeem under certain conditions. The offer of redemption can be

made by the importer or by an Attorney-in-Fact by virtue of a Special Power of Attorney (SPA). In this case, the offer to redeem was made on 27 December 1999 by Ruel Tolentino pursuant to a Special Power of Attorney, and was duly received by the Law Division.

Atty. Leguiab said that on record Loxon Phils., Inc. was the importer/consignee. The Law Division did not go to the extent of determining whether said corporation was a registered importer or not. He had no knowledge that the President of Loxon Phils., Inc. had brought a disclaimer that it was the importer of the forfeited goods. He recalled that the goods were auctioned off and the redemption did not push through.

Manuel Oktubre testified that he knew Ruel Tolentino. He often saw the latter at the MICP, which was a cargo forwarder. He said he saw Tolentino on 26 September 2002 at the Marine Division of the MICP, where he was requested by the latter to testify that he saw someone entrust the SPA to Tolentino. Tolentino signed the SPA in his presence. After signing the SPA, Tolentino introduced him to Paolo Gonzales, the person who gave the SPA to the former. He knew Paolo Gonzales to be the General Manager of Loxon Phils., Inc. because he read the contents of the SPA. He disclosed that he was a former examiner of the BOC and had known Tolentino since 1995. As to Paolo Gonzales, he first saw him when the former gave the SPA to Tolentino.

Renato M. Francisco testified that as COO3, the equivalent of customs examiner or appraiser, he was tasked to examine, classify and appraise importations assigned to him at the Formal Entry Division, BOC. On 18 November 1999, he was in his office at the Formal Entry Division. His immediate superiors were Andres Areza and Oscar Ojeda. He explained that there were several instances wherein physical examination has to be done on imported goods. These are when the surveyor sees that the container van is broken into or tampered, and when there is an alert or a hold order issued by competent authorities. On said day, Oscar Ojeda assigned to him Entry No. 118(302) consigned to Loxon Phils., Inc.

The usual procedure, he claimed, when an entry was assigned to him, began with the consignee/owner of the importation paying the bank the duties and taxes on the importation based on the invoice. Thereafter, what followed was the filing of the entry at the encoding center (ASYCUDA), which was manned by non-customs employees. When he received the entry, he examined the entry and all its supporting documents (Bill of Lading, Invoice and Packing List). He evaluated the entry to check whether there were discrepancies or unnecessary documents attached. In the subject importation, he found that the invoice was voluntarily upgraded to 1,350%, presumably by the consignee that was approved by the bank. He found the entry and the documents in order. He did not find the name of Ruel Tolentino on the face of the entry. The description of the entry was 450 cartons of assorted men's and ladies' accessories. Upon document examination, he went to the computer to "trigger" the entry. From the computer, he found out that the entry under the ASYCUDA was categorized as "yellow." He explained that there were three classifications under the ASYCUDA - green, yellow and red. Green meant that the entry went direct to the cash division for payment; yellow meant document-only examination was required; red meant that 100% physical examination of the entry was required. One hundred (100%) percent examination meant that the contents of the importation must be opened. This entry consigned to Loxon Phils., Inc. was classified as "yellow." After consulting the computer, he made his findings at the back of the entry.

He said it was the first time he encountered a voluntary upgrading of 1,350% and found the same irregular. However, since the bank approved the entry and was accepted by the Entry Encoding System, he considered it regular. He based his action on the approval of the bank. He merely made a documentary examination of the entry because there was no alert order or hold order on the entry. He added that the entry fell on the yellow lane, and there was no derogatory information regarding the same. He claimed that it was not required of him to conduct physical examination, because the entry was classified as yellow. He recommended the continuous processing of the entry and the release of the shipment. Under the entry, the customs duties and taxes paid amounted to

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P7,213.75. His findings with respect to the duties and taxes amounted to P81,781.00. After writing his findings at the back of the entry, he forwarded or gave it to his superior, Oscar Ojeda. The former's responsibility ended there. Ojeda consulted the computer and triggered the entry. The latter then stamped the word "yellow" at the back of the entry and signed it together with the final assessment notice. The entry was forwarded to the Cash Division.

Francisco said he had no knowledge of or participation in the crime charged. His only participation as regards the entry was performing the usual procedures in the processing of documents. It was only in court that he came to know of Ruel Tolentino and PO3 Nadora.

He admitted that his recommendation for the continuous processing of the entry was contained in an Officer on Case Report dated 18 November 1999.[35] Under the heading "findings" of said report, it stated that "found as declared right." In said report, his signature, together with the signatures of Francisco and Lintag, appears thereon. He further admitted that the bank merely accepted payment and did not examine, classify or appraise an entry. He said he did not verify why the entry was upgraded to 1,350%. He added that he did not comply with the Customs Memorandum Order requiring 100% examination and getting samples for purposes of evaluation, because the entry fell on the yellow lane.

On 27 August 2003, the trial court, agreeing with the version of the prosecution, promulgated its decision finding Tolentino, Ojeda, Francisco, Lintag and PO3 Nadora guilty of the crime charged. The dispositive portion of the decision reads:

> WHEREFORE, premises considered, the Court finds accused RUEL "JAYAR" TOLENTINO, OSCAR OJEDA, RENE M. FRANCISCO, DANILO LINTAG and PO3 ROBERTO NADORA GUILTY beyond reasonable doubt of the crime charged and are hereby sentenced to suffer the penalty of FOUR (4) YEARS and ONE (1) DAY as minimum to SIX (6) YEARS of prision correccional as maximum and to pay fine of P8,000.00 each without subsidiary imprisonment in case of insolvency and to pay the costs.
>
> Accordingly, the bonds posted for the provisional liberty of the accused are hereby CANCELLED.
>
> It appearing that accused ANTONIO CAAMIC, MICHAEL UMAGAT and AMADO GONZALES have not been apprehended to date, let warrant be issued for their arrest and let the case against them be ARCHIVED to be reinstated upon their apprehension.[36]

The trial court gave credence to the testimonies of the prosecution witnesses, especially the testimony of Lt. Julius Agdeppa, vis-à-vis the denials of all the accused. No improper motive to testify falsely against the accused was found on the part of the prosecution witnesses.

The trial court convicted Ruel Toletino for being the owner of the cargo subject of this case. As to PO3 Roberto Nadora, he was found guilty of escorting the shipment while in transit to the supposed consignee. His defense that his assistance was merely sought by Umagat and Gonzales to look for the container van was not given weight because of the declaration of Lt. Agdeppa that Francisco was pointed to as the escort of the cargo truck and was present when the same was apprehended in Manila.

Renato Francisco, Oscar Ojeda and Danilo Lintag were held responsible for omitting certain procedural steps in the processing of importation subject of this case. According to Zenaida Lanaria, Acting Chief, Liquidation and Billing Division, BOC, importation documents should pass through her office. In this case, Formal Entry and Internal Revenue Declaration No. 118302 only passed the Collection Division and never reached her division. Francisco's and Ojeda's claims that they merely followed procedure when they subjected the cargo involved to documentary examination and not to 100% actual physical examination were not accepted by the trial court in view of the presence of discrepancies and irregularities on the face of the documents relative to Formal Entry and

Internal Revenue Declaration No. 118302. Lintag's contention that the documents involved did not pass through his office was not believed by the trial court. This contention, the trial court said, was belied by the Memorandum for the District Collector of Customs dated 18 November 1999,[37] which was signed by him and contained the findings "Found as Declared." As to Lintag's claim that the signature therein was not his, the trial court ruled that he, having the burden to prove the same, failed to show that there was indeed a forgery.

The trial court expounded:

> This court need not be a computer expert as to clearly detect whether or not a kind of manipulation must have intervened into the procedure. It may not be mere suspicion but simple curiosity that would drive anyone to ask and find out whether the invoice is credible or not. To the plain understanding of the Court, it is basic in any computer system, which is Asy[c]uda program being adopted by the Bureau of Customs as mentioned in their testimonies pertaining to certain documents covering importations. Common sense also would dictate that the computer can not think and act like the operator. It is still the user who could possibly make it operate in the manner said user would like to produce the desired result. If you feed it garbage facts or data it will in turn emit the same input/output following the "garbage in, garbage out" principle in computerization. If the user wants the document to fall under a certain color code like yellow, red or green, it is possible because the user knows to come about it.
>
> If the entry and invoice stated items at random (mostly men's and ladies' accessories) inserting some electronics appliances and devices such as TV, blank tape, components VCD and VHS among them, the user can command the color code desired for it in the computer as mere yellow (code indicating the items in the document which does not require 100% examination) without even regard for the pricing, quantifying, etc. The examiners stressed in all the procedures corresponding to each and every phase of their duties and responsibilities that, they have no hand in deviation or omission that would occur in the course of the performance of each task or work assigned to persons involved in this case. Any error or defect along this line of function can easily be attributed by them to the computer, to the program or system adopted. What they wish to actually show to this Court is that the Bureau of Customs procedure have been computerized so it is following a system that could facilitate matters without much meticulous and rigid inspection or physical examination as it used to be when the system was not yet computerized.
>
> Mere browsing of the documents in question if common sense is employed vice the computer, the listed items considered men's and ladies' accessories therein could have aroused the BOC officials and personnel thinking why there were insertions of items other then men's and ladies' accessories and the quantities and pricing of which could also raise their eyebrows over the pieces of declared items for being not commensurate to more realistic unit price? How about the real men's and ladies' accessories? Are they relief goods or items for charity or donation that the pricing thereof are so low or cheap? Is the importer intending to re-s[ell] these goods?
>
> Now what about the computer if they really rely on it in the Bureau of Customs? Does it totally replace layman's visual determination of assessing such goods or items? Would not accused be but tempted to make even a mere glance of them to find out what the cartons or packages contain as to even accidentally discovering that contrary to what had been declared in the invoice. They are not mere men's and ladies' accessories but appliances and electronic items. Had the accused been more prudent and attentive enough in the course of their assigned task no other work force or imported goods, being transported for delivery to the consignee without being assessed of the corresponding duties and taxes.
>
> The irregular transaction could not have been possible without any form of collusion among the accused who handled the processing of the documents. x x x. Had they efficiently checked/verified the entry and invoice, the shipment could not have been released without payment of correct duties and taxes.[38]

The trial court found that the accused participated directly and constructively in the act charged for which they were held criminally liable.

On 28 August 2003, Tolentino applied for probation.[39] PO3 Nadora, Ojeda, Francisco and Lintag filed their respective notices of appeal. Subsequently, PO3 Nadora withdrew his notice of appeal and filed his application for probation. The notices of appeal having been filed on time, the trial court directed the transmission of the records of the case to the Court of Appeals. The applications for probation of PO3 Nadora and Tolentino were granted and a probation period for two years was imposed on each.[40]

During the pendency of the appeal with the Court of Appeals, Lintag died.[41]

On 13 April 2007, the Court of Appeals promulgated its decision denying the appeal and affirming in toto the decision of the trial court. The Motion for Reconsideration[42] of Ojeda was denied by the appellate court in its resolution dated 6 July 2007.

Petitioners Francisco and Ojeda are now before us via petitions for review respectively docketed as G.R. No. 177430 and No. 178935. Per resolution of the Court, the cases were ordered consolidated.[43]

Petitioner Francisco cites the following grounds:

> I
>
> WHETHER OR NOT CONSPIRACY IS ALLEGED IN THE INFORMATION OR PROVED DURING TRIAL.
>
> II
>
> WHETHER OR NOT THE GUILT OF ACCUSED-APELLANT RENE M. FRANCISCO WAS PROVED BEYOND REASONABLE DOUBT.
>
> III
>
> THE DECISION OF BOTH THE COURT OF APPEALS AND THE REGIONAL TRIAL COURT VIOLATED SECTION 14, ARTICLE VIII OF THE 1987 CONSTITUTION.

Petitioner Ojeda raises the following issues:

> WHETHER OR NOT THE COURT OF APPEALS ERRED IN FINDING PETITIONER OJEDA AND HIS CO-ACCUSED LIABLE FOR CONSPIRACY IN THE COMMISSION OF THE OFFENSE CHARGED DESPITE THE ABSENCE OF ANY ALLEGATION OF CONSPIRACY IN THE INFORMATION;
>
> WHETHER OR NOT, IN THE ABSENCE OF CONSPIRACY AND/OR ANY ALLEGATION OF CONSPIRACY IN THE INFORMATION, THE COURT OF APPEALS ERRED IN FINDING PETITIONER GUILTY BEYOND REASONABLE DOUBT OF THE OFFENSE CHARGED; and
>
> WHETHER OR NOT THE COURT OF APPEALS ERRED IN FINDING CONSPIRACY IN THE COMMISSION OF THE OFFENSE CHARGED.

The issues raised by petitioners can be limited to:

(1) Was conspiracy properly alleged in the information?

(2) If properly alleged, was conspiracy proven beyond reasonable doubt?

(3) Was the guilt of petitioners proven beyond reasonable doubt?

A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[44] In our jurisdiction, conspiracy can be alleged in the Information as a mode of committing a crime or it may be alleged as constitutive of the crime itself.[45]

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When conspiracy is alleged as a crime in itself,[46] the sufficiency of the allegations in the Information charging the offense is governed by Section 6,[47] Rule 110 of the Revised Rules of Criminal Procedure. In other words, the act of conspiring and all the elements of said crime must be set forth in the complaint or information.[48] The requirement of alleging the elements of a crime in the information is to inform the accused of the nature of the accusation against him so as to enable him to suitably prepare his defense.[49]

The requirements on sufficiency of allegations are different when conspiracy is not charged as a crime in itself but only as the mode of committing the crime. There is less necessity of reciting its particularities in the Information, because conspiracy is not the gravamen of the offense charged. Conspiracy is significant only because it changes the criminal liability of all the accused and makes them answerable as co-principals regardless of the degree of their participation in the crime. The liability of the conspirators is collective, and each participant will be equally responsible for the acts of others, for the act of one is the act of all.[50]

The Court in Estrada v. Sandiganbayan,[51] citing People v. Quitlong,[52]described how conspiracy as the mode of committing the offense should be alleged in the information, viz:

> In embodying the essential elements of the crime charged, the information must set forth the facts and circumstances that have a bearing on the culpability and liability of the accused so that the accused can properly prepare for and undertake his defense. One such fact or circumstance in a complaint against two or more accused persons is that of conspiracy. Quite unlike the omission of an ordinary recital of fact which, if not excepted from or objected to during trial, may be corrected or supplied by competent proof, an allegation, however, of conspiracy, or one that would impute criminal liability to an accused for the act of another or others, is indispensable in order to hold such person, regardless of the nature and extent of his own participation, equally guilty with the other or others in the commission of the crime. Where conspiracy exists and can rightly be appreciated, the individual acts done to perpetrate the felony becomes of secondary importance, the act of one being imputable to all the others [People v. Ilano, 313 SCRA 442]. Verily, an accused must know from the information whether he faces a criminal responsibility not only for his acts but also for the acts of his co-accused as well.
>
> A conspiracy indictment need not, of course, aver all the components of conspiracy or allege all the details thereof, like the part that each of the parties therein have performed, the evidence proving the common design or the facts connecting all the accused with one another in the web of the conspiracy. Neither is it necessary to describe conspiracy with the same degree of particularity required in describing a substantive offense. It is enough that the indictment contains a statement of the facts relied upon to be constitutive of the offense in ordinary and concise language, with as much certainty as the nature of the case will admit, in a manner that can enable a person of common understanding to know what is intended, and with such precision that the accused may plead his acquittal or conviction to a subsequent indictment based on the same facts. It is said, generally, that an indictment may be held sufficient "if it follows the words of the statute and reasonably informs the accused of the character of the offense he is charged with conspiring to commit, or, following the language of the statute, contains a sufficient statement of an overt act to effect the object of the conspiracy, or alleges both the conspiracy and the contemplated crime in the language of the respective statutes defining them [15A C.J.S. 842-844].
>
> x x x x
>
> x x x Conspiracy arises when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy comes to life at the very instant the plotters agree, expressly or impliedly, to commit the felony and forthwith to actually pursue it. Verily, the information must state that the accused have confederated to commit the crime or that there has been a community of design, a unity of purpose or an agreement to commit the felony among the accused. Such an allegation, in the absence of the usual usage of the words "conspired" or "confederated" or the phrase "acting in conspiracy," must aptly appear

> in the information in the form of definitive acts constituting conspiracy. In fine, the agreement to commit the crime, the unity of purpose or the community of design among the accused must be conveyed such as either by the use of the term "conspire" or its derivatives and synonyms or by allegations of basic facts constituting the conspiracy. Conspiracy must be alleged, not just inferred, in the information on which basis an accused can aptly enter his plea, a matter that is not to be confused with or likened to the adequacy of evidence that may be required to prove it. In establishing conspiracy when properly alleged, the evidence to support it need not necessarily be shown by direct proof but may be inferred from shown acts and conduct of the accused. (Emphases supplied.)

From the foregoing discussion, it is sufficient to allege conspiracy as a mode of the commission of an offense in either of the following manners: (1) by the use of the word "conspire," or its derivatives or synonyms, such as confederate, connive, collude, etc; or (2) by allegations of basic facts constituting the conspiracy in a manner that a person of common understanding would know what is intended, and with such precision as would enable the accused to competently enter a plea to a subsequent indictment based on the same facts.[53]

In the case before us, petitioners contend that the information did not contain any allegation of conspiracy, either by the use of the words conspire or its derivatives and synonyms, or by allegations of basic facts constituting conspiracy that will make them liable for the acts of their co-accused.

We find this contention untenable.

It is settled that conspiracy must be alleged, not merely inferred, in the information.[54] A look at the information readily shows that the words "conspiracy," "conspired" or "in conspiracy with" does not appear in the information. This, however, does not necessarily mean that the absence of these words would signify that conspiracy was not alleged in the information. After carefully reading the information, we find that conspiracy was properly alleged in the information. The accusatory portion reads in part: "all the above-named accused, with evident intent to defraud the government of legitimate taxes accruing to it from imported articles, did then and there, willfully, unlawfully and knowingly participate in and facilitate the transportation, concealment, and possession of dutiable electronic equipment and accessories with a domestic market value of P20,000,000.00 contained in container van no. TTNU9201241, but which were declared in Formal Entry and Revenue Declaration No. 118302 as assorted men's and ladies' accessories x x x." We find the phrase "participate in and facilitate" to be a clear and definite allegation of conspiracy sufficient for those being accused to competently enter a plea and to make a proper defense.

Both Rene Francisco and Oscar Ojeda were charged because they assisted in and facilitated the release of the subject cargo without the payment of the proper duties and taxes due the government by omitting certain acts in light of glaring discrepancies and suspicious entries present in the documents involved in the subject importation (Formal Entry and Internal Revenue Declaration No. 118302, invoice, bill of lading and packing list).

Francisco stresses that his guilt has not been proved beyond reasonable. He contends that he faithfully, carefully and regularly exercised his official duties as customs examiner in accordance with the applicable processes and procedure of his office. He further contends that the prosecution's principal witness, Lt. Agdeppa, absolved him of any involvement in the crime charged by saying that the former was not present when the cargo was apprehended, and that he did not know how Francisco's name was written in Formal Entry and Internal Revenue Declaration No. 118302. He adds that the decisions of both lower courts violated Section 14, Article VIII[55] of the 1987 Constitution, when they failed to name or identify who among the accused allegedly manipulated the computer system.

We are not persuaded that Francisco faithfully and regularly performed his duties as examiner as regards Formal Entry and Internal Revenue Declaration No. 118302. His total reliance on the ASYCUDA (Automated System for

Customs Data) Program employed at the BOC to determine if a cargo is to be subjected to 100% physical examination will not exonerate him. The fact that the subject importation was classified as "yellow" (examination of documents only) did not mean he could not and should not conduct 100% physical examination of the cargo in view of the glaring discrepancies and suspicious entries in the documents involved. The glaring discrepancies and suspicious entries include:

> - the Bill of Lading shows that the weight of the shipment is 3,500 kg. or 3.5 tons while the declared quantity of the importation was 450 cartons of assorted men's and ladies' accessories. According to Atty. Dandal, 3.5 tons is too heavy for 450 cartons of men's and ladies' accessories;
>
> - the declaration of the quantity in the invoice - the unit of measurement is gross but the invoice does not specify the number of items per gross;
>
> - the declaration of the prices in the invoice has no basis, e.g., the declaration of 20 centavos per gross has no basis for the valuation, it does not say how many pieces of t-shirts or blouses are worth 20 centavos;
>
> - the amount of the importation which was merely $500 is unusually low for a containerized importation;
>
> - the voluntary upgrading by 1350% is unusually high.[56]

By merely looking at Formal Entry and Internal Revenue Declaration No. 118302 and the invoice, one can readily see the discrepancy between what are declared in the former and in the latter. In Formal Entry and Internal Revenue Declaration No. 118302, what were mentioned were men's and ladies' accessories. However, in the invoice, electronic equipment and appliances such as VHS, Betamax, television and the like were stated. Despite all these questionable entries, Francisco recommended the continuous processing of the importation documents, conducting merely a document examination and not a 100% actual physical examination of the cargo. How can he turn a blind eye to all these obvious discrepancies? His failure to perform a 100% physical examination of the cargo, under the circumstances, is inexcusable and illicit, amounting to non-performance of his duty.

Francisco's contention that Lt. Agdeppa cleared him by saying that the former was not present when the cargo was apprehended, and that the latter did not know how Francisco's name was written in Formal Entry and Internal Revenue Declaration No. 118302 deserves scant consideration. Francisco was included in the charge, not because he was present when the container van was apprehended, but because he recommended the continuous processing of the subject importation without subjecting the same to 100% actual physical examination despite the clear disagreement of the entries in the importation documents. The lack of knowledge on the part of Lt. Agdeppa as to how Francisco's name was written in Formal Entry and Internal Revenue Declaration No. 118302 is so trivial and does not mean that the latter did not participate in the anomalous processing of the subject importation. From the testimonies of Atty. Dandal, Ojeda and from Francisco's own testimony, it was shown that the latter took part in the processing of the subject importation and that his name appeared on the dorsal portion of Formal Entry and Internal Revenue Declaration No. 118302.

We did not find any violation of Section 14, Article VIII of the 1987 Constitution. Crucial here were the actions of the accused Customs employees when they did not perform a 100% physical examination of the cargo despite the glaring discrepancies and suspicious entries in the documents involved. In fact, they issued a Memorandum for the District Collector of Customs dated 18 November 1999, wherein it was stated "Found as Declared." Such statement is a brazen lie, because the entries in the documents were not in harmony with one another. The entry described the cargo as men's and ladies' accessories, but the invoice clearly contained items (electronic equipment and appliances) not classified as men's and ladies' accessories. Moreover, the weight, prices and the quantity thereof were so vague and should have called the attention of the persons who processed the subject importation to order its 100% physical examination.

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Ojeda argues that he cannot he held responsible for affixing his signature to the documents involved and for not ordering the 100% physical examination of the cargo because he relied on the recommendation of his subordinate. In support thereof, he alleges (1) that Francisco failed to report the alleged glaring irregularities on the documents, hence, he did not examine the documents and relied on the recommendation of Francisco; (2) that he performed his duties in good faith; (3) that the suspicion of irregularity was obliterated by the voluntary upgrading of the value of the importation to 1,350%; and (4) that a clearance was issued by Lintag for the release of the cargo.

His arguments fail to convince us.

We find it surprising why he raises as his defense the alleged failure of Francisco to report the glaring irregularities on the documents. The very same documents checked by Francisco are in Ojeda's hands. Why is there a need to report any discrepancy if the latter himself can easily see the glaring discrepancies? From the entry and the invoice alone, one can definitely see something strange and irregular. His claim of good faith will not stand. As principal examiner and the superior of Francisco, his duty was to carefully review the evaluation made by his subordinate. This, he miserably failed to do. On the face of the documents, there were admittedly glaring discrepancies and suspicious entries that should have alerted him. But despite all these, he claims he merely approved what was recommended by Francisco - only document verification without 100% actual physical examination.

His contention that the suspicion of irregularity was obliterated by the voluntary upgrading of the price (of the importation) by 1350% is tenuous. The upgrading by 1350% did not obliterate but heightened plenty-fold the suspicion of irregularity. As an examiner for thirteen years before becoming a principal examiner, it is not believable for a person having so much experience not to know that there was something wrong with the importation. We agree with the Court of Appeals when it says:

> Regardless of the alleged voluntary upgrading, the verity alone that the prices of the declared items were grossly low indicated by itself, an irregularity. Verily, the high voluntary upgrading should have put the Appellants on inquiry. Even Appellant RENE M. FRANCISCO (hereinafter Appellant FRANCISCO) admitted in his testimony that it was his first time to come across such a high voluntary upgrading and that it was unusual and irregular. Appellant FRANCISCO conceded that the bank merely accepts payment. In view of this admission, the fact that the voluntary upgrading was approved by the bank is irrelevant and immaterial to the question of the regularity or lack of it of the valuation of the cargo.
>
> Moreover, it was not just the prices which rendered the invoice as suspect and incredible on its face. The presence of electronic items in the list of what was supposed to be just 450 cartons of men's and ladies' accessories, inter alia, should have alerted the examiner of the existence of an irregularity.[57]

The approval/signature of Lintag (in the Memorandum for the District Collector of Customs dated 18 November 1999 also signed by Francisco and Ojeda) will not absolve Francisco or Ojeda from liability. As found by both lower courts, Lintag, who was authorized to order 100% examination, gave his approval for the release of the cargo without ordering any physical examination despite the glaring discrepancies in the documents involved. Further, as found by both lower courts to which this Court agrees, Lintag was part of the conspiracy whereby he, Ojeda and Francisco facilitated the release of the subject importation. Thus, Ojeda's argument, that because a person occupying a position higher than his approved the release will free him from responsibility, cannot be sustained because this approving authority is part of the conspiracy.

Ojeda cites Macadangdang v. Sandiganbayan,[58] Arias v. Sandiganbayan,[59] De la Peña v. Sandiganbayan[60] and Magsuci v. Sandiganbayan[61] to justify his reliance on the recommendation of his subordinate and on the "yellow" classification of the ASYCUDA (Automated System for Customs Data) Program.

The cited cases do not apply to the instant case. The circumstances obtaining therein are different from the facts of the present case. In Macadangdang, the petitioner had no authority or duty to go beyond what appeared on the face of the documents. In the case before us, Ojeda has the authority to go beyond the documents if on the face thereof appear irregularities. Ojeda cannot also invoke Arias because his participation in the instant case is not limited to affixing his signature to a transaction. In Arias, the participation of the petitioner therein was limited to his signing on the document. In the instant case, Ojeda consulted the computer and he himself stamped the word "yellow" at the dorsal portion of Formal Entry and Internal Revenue Declaration No. 118302. De la Pena and Magsuci cannot apply because in said cases, this Court found the accused therein negligent of their duties. In the case before us, we find that the action or inaction of Francisco, Ojeda and Lintag was not the result of negligence, but was intentionally or deliberately done.

Conspiracy as a basis for conviction must rest on nothing less than a moral certainty.[62] While conspiracy need not be established by direct evidence, it is, nonetheless, required that to be proved by clear and convincing evidence by showing a series of acts done by each of the accused in concert and in pursuance of a common unlawful purpose.[63]

There was no direct evidence showing that all the accused came together and planned the crime charged. However, it is clear that their acts were in pursuance of one common criminal objective. They wanted to evade the payment of correct duties and taxes due the government. The failure of Francisco, Ojeda and Lintag to order a 100% examination of the subject importation, in spite of the glaring discrepancies and suspicious entries in the documents involved, without any doubt, facilitated the release of the importation involved by making it appear that said importation was legally done. Allowing the subject cargo to pass through Customs without a hitch clearly points to a conspiracy between and among all the accused. Their individual participation has been duly established. Since conspiracy has been proved beyond reasonable doubt, all the conspirators, regardless of their degree of participation, are criminally liable for the crime charged and proved - the act of one is the act of all.[64]

Was the crime of smuggling committed in this case?

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 facilitates the transportation, concealment or sale of such goods after importation, knowing the same to have been imported contrary to law.[65]

Article 3601 of the Tariff and Customs Code of the Philippines, which contains the penalties for smuggling, reads:

> SECTION 3601. Unlawful Importation. -- Any person who shall fraudulently import or bring into the Philippines, or assist in so doing, any article, contrary to law, or shall receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of such article after importation, knowing the same to have been imported contrary to law, shall be guilty of smuggling and shall be punished with:
>
> - 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 may or shall be imposed when the crime of serious physical injuries shall have been committed and the penalty of reclusion perpetua to death shall be imposed when the crime of homicide shall have been committed by reason or on the occasion of the unlawful importation.
>
> In applying the above scale of penalties, if the offender is an alien and the prescribed penalty is not death, he shall be deported after serving the sentence without further proceedings for deportation; if the offender is a government official or employee, the penalty shall be the maximum as hereinabove prescribed and the offender shall suffer an additional penalty of perpetual disqualification from public office, to vote and to participate in any public election.
>
> When, upon trial for violation of this section, the defendant is shown to have had possession of the article in question, possession shall be deemed sufficient evidence to authorize conviction unless the defendant shall explain the possession to the satisfaction of the court: Provided, however, That payment of the tax due after apprehension shall not constitute a valid defense in any prosecution under this section.

There is no doubt that smuggling was committed in this case. The collective evidence on record shows that the Francisco, Ojeda and Lintag assisted in the unlawful importation of dutiable articles by facilitating their release from the Bureau of Customs without payment of proper duties and taxes. Having the power to order the physical examination of the subject importation, they intentionally did not do so despite the glaring irregularities found on the face of the documents (Formal Entry and Internal Revenue Declaration No. 118302, Invoice No. LPI/99-500 and Bill of Lading). They helped conceal the true nature of the cargo. Thereafter, the cargo, which had the appearance of having been legally imported through their help, was removed from customs premises and was being transported to an undisclosed location. Unfortunately for all the accused, said cargo, which was being guarded and escorted by PO3 Nadora, was intercepted by Presidential Anti-Smuggling Task Force (PASTF) Aduana.

We agree with the Court of Appeals when it says:

In the instant case, the web of conspiracy covered the acts of the Appellants who facilitated the release of the subject importation without subjecting it to 100% physical examination, thus, preventing the discovery of the illegal importation. The other accused i.e. PO3 ROBERTO NADORA, ROEL TOLENTINO as well as ANTONIO CAAMIC, MICHAEL UMAGAT and AMADO GONZALES participated in the transportation of the subject importation and helped secure the same.[66]

The Court notes that accused Danilo J. Lintag died during the pendency of his appeal before the Court of Appeals. Thus, pursuant to People v. Bayotas,[67] wherein we ruled that the death of the accused pending appeal of his conviction extinguishes his criminal liability as well as the civil liability based solely thereon, the appeal of the late Danilo J. Lintag before the Court of Appeals is dismissed.

We now go to the penalties imposed on Francisco and Ojeda. The trial court, as affirmed by the Court of Appeals, imposed on each of them a fine of P8,000.00 and an imprisonment of four (4) years and one (1) day, as minimum to six (6) years as maximum.

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Under Number 4 of Article 3601 of the TCCP, if the appraised value, including the duties and taxes, of the article illegally imported exceeds one hundred fifty thousand pesos, the person liable shall be punished with a fine of not less than eight thousand pesos nor more than ten thousand pesos and imprisonment of not less than eight (8) years and one (1) day nor more than twelve (12) years. In the instant case, the domestic value of the subject importation is P20,000,000.00.[68]

Under the Indeterminate Sentence Law, if the offense is punished by a special law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by law and the minimum shall not be less than the minimum term prescribed by the same.[69] Applying said provision of law, the trial court failed to impose the correct penalty of imprisonment. It imposed a penalty of imprisonment the minimum of which was below that prescribed by the law. To correct this error, we therefore increase the same to eight (8) years and one (1) day, as minimum, to twelve (12) years, as maximum. This applies only to petitioners Francisco and Ojeda. As to accused Tolentino and PO3 Nadora, we can no longer modify the penalty imposed on them because the decision of the trial court is already final.

WHEREFORE, premises considered, the decision of the Court of Appeals dated 13 April 2007 in CA-G.R. CR No. 28025 is hereby AFFIRMED with the MODIFICATION that Rene M. Francisco and Oscar A. Ojeda are each sentenced to suffer the indeterminate penalty of eight (8) years and one (1) day, as minimum, to twelve (12) years, as maximum.

As to accused Danilo J. Lintag, his criminal liability and the civil liability based solely on the act complained of, are extinguished. His appeal before the Court of Appeals is dismissed.

SO ORDERED.

Ynares-Santiago, (Chairperson), Velasco, Jr., Nachura, and Peralta, JJ., concur.

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[1] Mentioned as Renato M. Francisco in the TSN.

[2] Penned by Associate Justice Myrna Dimaranan Vidal with Associate Justices Jose L. Sabio, Jr. and Jose C. Reyes, Jr., concurring. CA rollo, pp. 325-344.

[3] Records, Vol. 2, pp. 138-140.

[4] CA rollo, pp. 417-418.

[5] Records, Vol. 1, p. 2.

[6] Id. at 131-138.

[7] Id. at 246.

[8] Id. at 319.

[9] Id. at 330.

[10] TSN, 4 June 2001.

[11] TSN, 17 July 2001 and 10 September 2001.

[12] TSN, 30 July 2001.

[13] Exh. A.

[14] Exh. B.

[15] TSN, 4 June 2001, p. 16.

[16] Id. at 18.

[17] Id. at 5-23.

[18] Exh. A; Records, Vol. 1, pp. 35-36; Vol. 2, p. 458.

[19] Records, Vol. 1, p. 37.

[20] Id.

[21] Exh. A; Records, Vol. 1, p. 35.

[22] Exhs. D-D-3; Records, Vol. 2, pp. 513-516.

[23] Records, Vol. 1, p. 5.

[24] TSN, 17 July 2001, p. 36.

[25] TSN, 14 May 2002 and 20 May 2002.

[26] TSN, 20 May 2002.

[27] TSN, 12 August 2002, 26 August 2002.

[28] TSN, 9 September 2002, 23 September 2002.

[29] TSN, 23 September 2002.

[30] TSN, 30 September 2002.

[31] TSN, 14 October 2002.

[32] Memorandum dated 23 August 1999 issued by Bureau of Customs Commissioner Nelson A. Tan; Records, Vol. 1, pp. 33-34.

[33] Exh. A.

[34] See Exh. N, pars. 5 and 7.

[35] Exh. M; Records, p. 32.

[36] CA rollo, p. 64.

[37] Exh. M; Records, p. pp. 32 and 77.

[38] CA rollo, pp. 60-61.

[39] Records, Vol. 2, pp. 754-755.

[40] Id. at 917-920.

[41] Certificate of Death; CA rollo, p. 322.

[42] CA rollo, pp. 378-393.

[43] Rollo (G.R. No. 177430), p. 114.

[44] Article 8, Revised Penal Code.

[45] Estrada v. Sandiganbayan, 427 Phil. 820, 854 (2002).

[46] Examples of conspiracies constituting the crime itself under the Revised Penal Code are: conspiracy to commit treason (Art. 115), coup d'etat, rebellion or insurrection (Art. 136) and sedition (Article 141).

[47] Sec. 6. Sufficiency of complaint or information. - A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.

[48] Estrada v. Sandiganbayan, supra note 45.

[49] People v. Dimaano, G.R. No. 168168, 14 September 2005, 469 SCRA 647, 667.

[50] Estrada v. Sandiganbayan, supra note 45.

[51] Id.

[52] 354 Phil. 372, 388-390 (1998).

[53] Id.

[54] Garcia v. Court of Appeals, 420 Phil. 25, 35 (2001).

[55] Section 14. No decision shall be rendered by any court without expressing therein clearly the facts and the law on which it is based.

[56] CA rollo, p. 335.

[57] Id. at 339.

[58] G.R. Nos. 75440-43, 14 February 1989, 170 SCRA 308.

[59] G.R. No. 81563, 19 December 1989, 180 SCRA 309.

[60] 374 Phil. 368 (1999).

[61] 310 Phil. 14 (1995).

[62] People v. Mapalo, G.R. No. 172608, 6 February 2007, 514 SCRA 689, 710.

[63] People v. Barcenal, G.R. No. 175925, 17 August 2007, 530 SCRA 706, 726.

[64] People v. Bulan, G.R. No. 143404, 8 June 2005, 459 SCRA 550, 575.

[65] Jardeleza v. People, G.R. No. 165265, 6 February 2006, 481 SCRA 638, 661.

[66] CA rollo, p. 343.

[67] G.R. No. 102007, 2 September 1994, 236 SCRA 239.

[68] Certification issued by Stanley N. Villanueva, Valuation and Classification Division, Bureau of Customs. Records, Vol. 1, p. 5.

[69] Section 1, Act No. 4103, as amended.

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