

**RAUL BASILIO D. BOAC, RAMON B. GOLONG, CESAR F. BELTRAN,
AND ROGER A. BASADRE, PETITIONERS, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

G.R. No. 180597. November 07, 2008

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

This appeal by certiorari under Rule 45 seeks to set aside the August 16, 2007 Decision[1] of the Sandiganbayan, finding petitioners guilty beyond reasonable doubt of violating Section 2203 of the Tariff and Customs Code. Petitioners' motion for reconsideration was denied by the court through its November 14, 2007 Resolution.[2]The Facts

Raul Basilio Boac, Ramon Betuin Golong, Cesar Fantone Beltran, Roger Alcantara Basadre, and Benjamin Castaneda Alfonso are members of the Philippine National Police (PNP)-Criminal Investigation and Detection Group (CIDG). They hold the ranks of Police Senior Superintendent, Police Inspector, Senior Police Officer II, Senior Police Officer II, and Senior Police Officer I, respectively. In an information dated October 18, 2005, they were charged with violation of Sec. 2203 in relation to Sec. 3612 of the Tariff and Customs Code, as follows:

That on or before July 27, 2004 or prior or subsequent thereto in Cagayan de Oro City and within the jurisdiction of this Honorable Court, above-named accused P/SR. SUPT. RAUL BASILIO DONIDA BOAC, SG-26, P/INSP. RAMON BETUIN GOLONG, SG-22, SPO2 CESAR FANTONE BELTRAN, SG-17, SPO2 ROGER ALCANTARA BASADRE, SG-17, SPO1 BENJAMIN CASTANEDA ALFONSO, SG-16, all public officers being then members of the Philippine National Police, taking advantage of their official positions, while committing the offense in relation to office, with grave abuse thereof, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and criminally, without lawful authority or delegation from the Collector of Customs, flag down, search and seize three (3) container vans consigned to Japan Trak surplus (Kakiage Surplus).

CONTRARY TO LAW.[3]

Boac, Golong, and Beltran pleaded not guilty on January 23, 2006; Basadre entered the same plea on February 20, 2006. Alfonso remained at large. At pretrial, the prosecution and defense stipulated that in the evening of July 27, 2004, Golong, Beltran, Basadre, and Alfonso, upon the order of Boac, but without the authority from and coordination with the Bureau of Customs (BOC), Collection District X, Cagayan de Oro City, flagged down three container vans consigned to Kakiage Surplus. The said vans were allowed to be brought to the warehouse of the consignee and the actual search was done on July 28, 2004.[4]

Atty. Lourdes V. Mangaoang, then Customs District Collector of Cagayan de Oro City, testified that the CIDG operatives (herein petitioners) did not have a written authority from the Commissioner of Customs or the District Collector. According to her, Golong claimed that they had clear orders from Boac to open and search the vans. She instructed her personnel to open the vans only to show that there was nothing illegal in their contents. She

prepared a letter of protest addressed to Boac but it was ignored; hence, she filed the instant case.[5]

Dario C. Amolata, license customs broker, testified that he went to see the vans after learning that they were flagged down by petitioners. The following day, he went to the warehouse with Melvin Yamit and Richard Godoy of the Enforcement and Security Services of the BOC, Region X to witness the inspection of the vans. No contrabands were found upon inspection. Yamit corroborated the testimony of Amolata.[6]

For the defense, Boac testified that on July 27, 2004, he was in Manila on leave. Beltran allegedly informed him that three container vans with contrabands were released by the BOC; thus, Boac instructed Golong and his team to flag down the subject vans. After the inspection of the vans and without finding any contraband, Boac directed Golong to leave the premises. Golong corroborated Boac's testimony, adding that he and his team did not open the vans on July 27, 2004 because there were no representatives from the BOC. Beltran testified that in the morning of July 27, 2004, Voltaire Sabelina, an appraiser from the BOC, informed him that three container vans will be released from the pier around 5:00 p.m. It was alleged that inside the two of the uninspected containers were television sets from Japan.[7]

Ruling of the Sandiganbayan

In convicting petitioners, the Sandiganbayan applied the following provisions of the Tariff and Customs Code:

Section 602. The Bureau of Customs, headed by a Commissioner, has, among other things, the following general duties, powers and jurisdiction, in respect to the levy of customs duties, to wit:

x x x x

b. The prevention and suppression of smuggling and other frauds upon the customs;

x x x x

j. The enforcement of the tariff and customs laws and all other laws, rules and regulations in relation to the tariff and customs administration.

Sec. 2203. Persons Having Police Authority. - For the enforcement of the tariff and customs laws, the following persons are authorized to effect searches, seizures and arrests conformably with the provisions of said laws.

x x x x

d. Officers generally empowered by law to effect arrests and execute processes of the courts, when acting under the direction of the Collector.

Sec. 3612. Violations of Tariff and Customs Laws and Regulations in General. - Any person who violates a provision of this Code or regulations pursuant thereto, for which delinquency no specific penalty is provided, shall be punished by a fine of not more than one thousand pesos or by imprisonment for not more than one year, or both. If the offender is an alien, he shall be deported after serving the sentence; and if the offender is a public official or employee, he shall suffer disqualification to hold public office, to vote and participate in any public election for ten years.

The anti-graft court ruled that petitioners belong to the category of officers in Sec. 2203(d); thus, they needed a written authority from the Commissioner of Customs or District Collector in order to conduct searches, seizures and arrests. In this case, the court said, the prosecution established the lack of said written authority; even Beltran and Golong admitted that they did not have any authorization to search the vans. The court stated:

Verily, it was evident in the above-quoted provisions of Sec. 602 and Sec. 2203 of the Tariff and Customs

Code that indeed the Tariff and Customs Code vested upon the Bureau of Customs the authority to enforce the tariff and customs laws, including the prevention and suppression of smuggling and other frauds committed against it.

The PNP-CIDG cannot arrogate upon itself the power which, under the law, is exclusively vested to the Collector of Customs. The PNP-CIDG can only effect search and seizure upon the direction of the Collector of Customs. Hence, it cannot on its own effect search and seizure.[8]

On August 16, 2007, the Sandiganbayan rendered the assailed judgment, the fallo of which reads:

WHEREFORE, the Court finds accused P/Sr. Supt. Raul Basilio Donida Boac, P/Insp. Ramon Betuin Golong, SPO2 Cesar Fantone Beltran and SPO2 Roger Alcantara Basadre GUILTY, beyond reasonable doubt, for violation of Section 2203 of the Tariff and Customs Code, and, pursuant to Section 3612 thereof, are hereby sentenced each to suffer the penalty of:

(A) imprisonment of one (1) year;

(B) pay the fine of ONE THOUSAND PESOS (P1,000.00); and

(C) disqualification to hold public office, to vote and participate in any public election for ten years.

SO ORDERED.[9]

On November 14, 2007, the Sandiganbayan denied petitioners' motion for reconsideration. Thus, we have this petition.

Assigned Errors

THE COURT A QUO ERRED IN FINDING THE PETITIONERS GUILTY BEYOND REASONABLE DOUBT OF VIOLATION OF SECTION 2203 OF THE TARIFF AND CUSTOMS CODE DESPITE THE ABSENCE IN ITS OWN FINDINGS THAT THE PETITIONERS/ACCUSED CONDUCTED SEARCH, SEIZURE OR ARREST AND DESPITE THE EVIDENCE FROM BOTH PARTIES THAT THE PETITIONERS DID NOT CONDUCT SEARCH, SEIZURE OR ARREST IN THE INSTANT CASE.

THE COURT A QUO ERRED IN RULING THAT AUTHORITY OR DELEGATION FROM THE COLLECTOR OF CUSTOMS IS REQUIRED WHEN THE PETITIONERS FLAGGED DOWN THE CONTAINER VANS OUTSIDE THE TERRITORIAL JURISDICTION OF THE COLLECTOR OF CUSTOMS IN THE EXERCISE OF THEIR OFFICIAL DUTIES AS POLICE OFFICERS.

Petitioners assert that they did not conduct any search, seizure, or arrest; hence, there was no violation of the Tariff and Customs Code. During the search conducted in the consignee's warehouse on July 28, 2004, the employees of the owner of the shipment unloaded the goods under BOC personnel supervision. Petitioners allege that they only witnessed the search; they did not make any seizures or arrests. After searching the first van and half of the second van without any contraband being found, Customs Police Yamit and Godoy decided to stop the search despite the request of petitioners to continue. Since the Customs Police were already leaving the area, Boac instructed his team to leave the vicinity.[10]

Petitioners further claim that the police's authority to stop, search, and effect seizure and arrest, if necessary, is no longer exclusively vested on the Collector of Customs. Regular PNP members are generally empowered by law to effect arrests in accordance with Republic Act No. (RA) 6975, to wit:

Section 24. Powers and Functions. The PNP shall have the following powers and functions:

(a)

Enforce all laws and ordinances relative to the protection of lives and properties;

(b)

Maintain peace and order and take all necessary steps to ensure public safety;

(c)

Investigate and prevent crimes, effect the arrest of criminal offenders, bring offenders to justice and assist in their prosecution;

(d)

Exercise the general powers to make arrest, search and seizure in accordance with the Constitution and pertinent laws;

x x x x

In addition, the PNP shall absorb the office of the National Action Committee on Anti-Hijacking (NACAH) of the Department of National Defense, all the functions of the present Philippine Air Force Security Command (PAFSECOM), as well as the police functions of the Coast Guard. In order to perform its powers and functions efficiently and effectively, the PNP shall be provided with adequate land, sea, and air capabilities and all necessary material means of resources.[11]

Petitioners, as members of the PNP-CIDG, also have the following functions under RA 6975:

Section 35. Support Units. The PNP shall be supported by administrative and operational support units. The administrative support units shall consist of x x x

x x x x

(4) Criminal Investigation Unit. Headed by a Director with the rank of chief superintendent, the Criminal Investigation Unit shall undertake the monitoring, investigation and prosecution of all crimes involving economic sabotage, and other crimes of such magnitude and extent as to indicate their commission by highly placed or professional criminal syndicates and organizations.

This unit shall likewise investigate all major cases involving violations of the Revised Penal Code and operate against organized crime groups, unless the President assigns the case exclusively to the National Bureau of Investigation (NBI).

Petitioners contend that they were investigating a possible connivance of smugglers with some corrupt customs personnel. They maintained that their act of flagging down the container vans was not connected with the enforcement of the tariff and customs laws, smuggling being a form of economic sabotage which is within the powers of the PNP-CIDG to monitor and investigate. Thus, according to them, no prior authority from the Collector of Customs is required in performing their duties as police officers. Besides, they said they immediately coordinated with the Customs Police for the latter to conduct the actual search of the container vans; hence, there was no violation of Sec. 2203.[12]

The Court's Ruling

The petition is meritorious. Petitioners should be acquitted of the charge.

The prosecution has the burden of proving the guilt of the accused beyond reasonable doubt. In this case, it is clear that petitioners neither searched the container vans nor effected seizure and arrest. The testimony of Customs Broker Amolata, the prosecution witness, supports this finding:

Atty. Llamas:

Q:

Did the PNP-CIDG personnel open the container vans?

A:

No, Sir.

Q:

They did not open the container vans?

A:

Yes, Sir.

Q:

You mentioned that you were able to talk with the PNP-CIDG personnel and they agreed to bring the trucks or the container vans to the warehouse of the consignee. Is that correct?

A:

Yes, Sir.

Q:

Were the container vans opened in the evening of July 27, 2004 after the trucks were brought to the place of the consignee, were they opened?

Prosecutor Lubigan:

Your Honors, what particular time and date is he referring to, Your Honors?

Atty. Llamas:

In the evening, Your Honors, after the container vans were brought to the warehouse of the consignee on July 27, 2004 whether the container vans were opened in the evening of July 27, 2004, Your Honors.

Witness: No, Sir.[13]

It should be noted that the container vans were brought to the consignee's warehouse and not to the CIDG headquarters. On July 28, 2004, the container vans were searched but not by petitioners, as testified to by petitioners Beltran and Golong, as follows:

(SPO2 Cesar Beltran)

Q:

Okay, what happened when Yamit and Godoy arrived?

A:

They talked with the owner of the container vans and they opened the container vans.

Q:

Who ordered the opening of the container vans?

A:

The persons from the Bureau of Customs and Mr. Bernales, the owner.

Q:

What happened, after it was opened?

A:

They unloaded the cargoes.

Q:

Where were you during that time?

A:

We were just there watching the unloading of the contents.[14]

(Police Inspector Ramon Golong)

Q:

So, what happened there?

A:

One of the container vans was being unloaded when I arrived while we act as observers during the stripping of the contents. The employees of the owner of the shipment were unloading the shipment while the Customs people were supervising them.[15]

The prosecution does not rebut the above testimonies of petitioners. In fact, when questioned by Associate Justice Norberto Y. Germaldez, the prosecution witness, Customs Broker Amolata, attested to the same fact as follows:

Justice Germaldez:

Q:

Who brought out the items from the container vans?

A:

The employees of the consignee, Your Honors.

Q:

The PNP-CIDG personnel or the accused did not search, they were just witnessing the bringing out of the items?

A:

They were witnessing also, Your Honors, similar of what were being done by the employees or personnel of the Environment and Security Services of the Bureau of Customs as well as myself, Your Honors.

Q:

Did they search the items as if they were looking for something?

A:

I cannot remember anymore, Your Honors.[16]

When examined by the prosecutor, Amolata testified:

Q:

Did the PNP-CIDG personnel seize any equipment on that shipment? Did they seize any equipment inside the container vans? Did they seize anything, did they take anything, did they get anything inside those three container vans?

A:

No, Sir.

Q:

So there was no seizure, Mr. Witness? They did not seize anything?

A:

Yes, Sir.

Q:

Did they make any arrest, did they arrest anybody who were there on the 27th and on the 28th of July 2004?

A:

No, Sir.

Q:

And the searching was--the opening and the taking out of the equipment were done by the employees of Kakiage Surplus. Am I right, Mr. Witness?

A:

Yes, Sir.

Q:

It was not done by the PNP-CIDG personnel?

A:

Yes, Sir.[17]

The search was actually conducted by Customs Police Yamit and Godoy on July 28, 2004. The Customs Police held the keys of the vans, as attested to by Amolata:

Q:

Who has the keys to these container vans, if you know?

A:

The keys of the container vans were kept by Captain Capacite of the Enforcement and Security Services of the Bureau of Customs, Sir.

Q:

And what is the business of this Captain Capacite, Mr. Witness, who is from the Bureau of customs in holding that keys despite the fact that the container vans were already released by the Bureau of customs Region 10?

A:

He requested to have the keys of the container vans to be kept to him because according to him, the following morning he should also be there inside the premises of the consignee to also witness the stripping or taking out of the contents of the container vans, Sir.

x x x x

Q:

Would you agree with me, Mr. Witness, that Yamit and Godoy has the keys with them on July 28, 2004?

A:

I do not know, Sir, whether the keys were being given by Captain Capacite to them.

Q:

And Yamit and Godoy were direct subordinates of this Captain Capacite. Would you confirm that?

A:

Yes, Sir.

Q:

And the keys were with Capacite?

A:

Yes, Sir.

Q:

Is it normal procedure despite the fact that the container vans were already released by the Bureau of Customs, the keys to the container are still held by Captain Capacite?

x x x x

A:

Not normal procedure, Sir.

Q:

Not normal procedure, Mr. Witness?

A:

Yes, Sir.[18]

Furthermore, the vans were opened without the presence of the PNP-CIDG's team leader, Inspector Golong. Golong testified:

Q:

During the next day, July 28, 2004, could you tell us what happened?

A:

The following day when I arrived at Barangay Agusan, the container vans were already opened. The Bureau of Customs people and the owner were already there.[19]

The search was under the direction of the Customs Police because when the Customs Police decided to stop the search, petitioners acceded and left the premises. Boac testified:

Q:

What happened next?

A:

About after lunch already about 1:30 to 2:00 o'clock in the afternoon he called me again informing me that the customs personnel are already leaving the premises and I asked him what happened. He told me that the customs personnel are leaving and were satisfied that there are no contents on the container vans, however, he told me that the third container van was not stripped off of its contents and I asked Mr. Golong why and I told Inspector Golong to talk to one of the customs personnel to continue stripping the container van.

x x x x

I talked to Mr. Yamit since Inspector Golong told me that they are already stripping the contents of the third container van and they were already leaving the place, so I instructed Inspector Golong if I could talk to Yamit and ask Yamit if they could continue the stripping of the vans, so he gave me the phone and I talked to Mr. Yamit and told him to continue stripping the third container van up to the last contents. He told me they are already satisfied that there are no contraband items in the container vans but I insisted to just continue stripping the contents of the container van and he told me that they are already being called by their customs collector in Region 10, sir.

Q:

After this conversation, what did you do?

A:

So, when they are already leaving the place, the customs people, I also ordered Inspector Golong to immediately leave the place because customs personnel are already leaving and they don't have anymore business being there since customs personnel are leaving the place.[20]

The foregoing testimony, which Golong corroborated, was not disputed by the prosecution. It is thus very clear that the search was not done by petitioners but by the Customs Police. Petitioners did not seize anything nor arrested anybody. They merely observed the search which they requested to be undertaken to check for contrabands. Notably, the consignee did not file any complaint against petitioners.

The information charged petitioners for illegally flagging down, searching, and seizing the three container vans on July 27, 2004. Petitioners, however, could not also be held liable for these acts. It is a fact that no search and seizure of the vans was done on the night of July 27, 2004. The act of flagging down the vehicles is not among those proscribed by Sec. 2203 of the Tariff and Customs Code. Mere flagging down of the container vans is not punishable under the said law.

We ruled in *People v. Ganguso*:

An accused has in his favor the presumption of innocence which the Bill of Rights guarantees. Unless his guilt is shown beyond reasonable doubt, he must be acquitted. This reasonable doubt standard is demanded by the

due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged. The burden of proof is on the prosecution, and unless it discharges that burden the accused need not even offer evidence in his behalf, and he would be entitled to an acquittal. Proof beyond reasonable doubt does not, of course, mean such degree of proof as, excluding the possibility of error, produce absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. The conscience must be satisfied that the accused is responsible for the offense charged.[21]

Well-entrenched in jurisprudence is the rule that the conviction of the accused must rest, not on the weakness of the defense, but on the strength of the prosecution. The burden is on the prosecution to prove guilt beyond reasonable doubt, not on the accused to prove his innocence.[22] In this case, the prosecution failed to show that petitioners committed the acts prohibited by Sec. 2203 of the Tariff and Customs Code. There is no such evidence, testimonial or otherwise, that identifies petitioners as responsible for the alleged illegal search. Hence, acquittal is in order.

As regards the second issue, there is no conflict between the aforequoted provisions of the Tariff and Customs Code and RA 6975, as amended. The jurisdiction of the Commissioner of Customs is clearly with regard to customs duties. Should the PNP suspect anything, it should coordinate with the BOC and obtain the written authority from the Collector of Customs in order to conduct searches, seizures, or arrests. Coordination is emphasized in the laws. While it is an admitted fact that there was no such coordination initiated by the PNP-CIDG in this instance, nevertheless, petitioners cannot be convicted under the Tariff and Customs Code since there is no evidence that they did actually search the container vans.

WHEREFORE, the August 16, 2007 Decision and November 14, 2007 Resolution of the Sandiganbayan are REVERSED and SET ASIDE. Petitioners are ACQUITTED of the charge against them. No costs.

SO ORDERED.

Quisumbing, (Chairperson), Carpio-Morales, Tinga, and Brion, JJ., concur.

[1] Rollo, pp. 27-39. Penned by Associate Justice Norberto Y. Galdes and concurred in by Associate Justices Godofredo L. Legaspi and Efren N. De la Cruz.

[2] Id. at 41-43.

[3] Id. at 28.

[4] Id. at 29.

[5] Id. at 30.

[6] Id. at 30-31.

[7] Id. at 32-33.

[8] Id. at 36.

[9] Supra note 1, at 36-37.

[10] Rollo, p. 7.

[11] RA 6975, "An Act Establishing the Philippine National Police under a Reorganized Department of the Interior and Local Government, and for Other Purposes," December 13, 1990, as amended by RA 8551 or the

"The New Police Act of 1998."

[12]Rollo, p. 23.

[13]TSN, August 8, 2006, pp. 22-23.

[14]TSN, February 1, 2007, p. 19.

[15] TSN, February 8, 2007, p. 17.

[16] TSN, August 8, 2006, pp. 26-27.

[17] Id. at 30-31.

[18] Id. at 26-29.

[19] TSN, February 8, 2007, p. 16.

[20]TSN, January 31, 2007, pp. 16-19.

[21] G.R. No 115430, November 23, 1995, 250 SCRA 268, 274-275.

[22] People v. Velarde, G.R. No. 139333, July 18, 2002, 384 SCRA 646, 663.

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