

## EDEN TAN, PETITIONER, VS. THE COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

*G.R. No. 56866. June 27, 1985*

Ponente: CUEVAS, J.

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### CUEVAS, J.:

Appeal by way of Certiorari from the decision dated September 29, 1980 of the then Court of Appeals in CA-G.R. No. 19511-CR entitled "People of the Philippines versus Eden Tan" which affirmed in toto the Circuit Criminal Court's judgment in Criminal Case No. CCC-VII-1500-P.C., finding petitioner-appellant guilty of violation of Section 3602 of the Tariff and Customs Code, as amended.

The facts and circumstances that gave rise to appellant's prosecution and conviction as summarized by the Honorable Solicitor General in the People's Brief,[1] runs thus —

"At about 8:15 in the evening of November 17, 1974, Cathay Pacific Airways Flight No. 903 from Hongkong landed at the Manila International Airport (MIA for short). Eden Tan, one of the passengers of this flight, appeared to be restless, and as if she was looking for somebody. When she was assigned to a particular customs examiner, she refused to be examined, and she moved around the examination room of the arrival area of the airport, as if she was looking for someone. The chief of the customs agents, after observing her behavior, assigned her to customs examiner Macud. (pp. 3, 4, 5, 7, 8 & 9, tsn, September 18, 1975)

While her baggages were being examined by examiner Macud, she appeared uneasy and restless. The airport collector of customs approached her and advised the examiner to make a thorough examination of her baggages. As the examiner started the examination of her baggages, he found a plastic bag (Exh. "B") containing fruits and underneath, fancy jewelries and stones. Because of the large quantity of the fancy jewelries found at the initial examination of her (Eden Tan's) baggages the collector ordered the customs examiner to make a thorough search of all her luggages. The collector also instructed that her handbag be searched. A search of her handbag (Exh. "B-1") yielded precious stones sewed along the lining and at the bottom of the hand-bag. Precious stones were also found sewed along the four corners of a blanket (Exh. "H") belonging to Eden Tan and among her clothings. When these items were discovered, Eden Tan became hysterical and she cried saying that those things were not hers but were only given to her (pp. 11, 12, 13, 14, 15, 16, 21 & 22, tsn, id.)

The articles found in Eden Tan's possession were contained in five (5) plastic bags, one (1) carton, one (1) bed cover (blanket) and a travelling bag. Before starting with the examination of her luggages, customs examiner Macud asked Eden Tan to produce her baggage declaration which the latter did. The baggage declaration shown to Macud merely mentions personal effects, and it contained the signature of Eden Tan. The examiner asked her if she had anything more to declare. Eden told the examiner that she had nothing more to declare except personal effects as stated in her baggage declaration. The initial examination of Eden Tan's baggages by examiner Macud yielded necklaces and pendants concealed among fruits. All her baggages were brought to the office of airport customs collector Dario for inventory and appraisal. (pp. 30, 31, 32, 34, 35, 36, tsn, October 14, 1975)

A thorough examination of the baggages of Eden Tan yielded cash consisting of dollars, Philippine pesos and Taiwan money, assorted jewelries, precious stones, calculator, camera lens, cooking utensils, clothing and various items, with a total appraised value of \$6,498.20, and an estimated customs duties, taxes and other charges totalling P235,530.00 (Exhs. "G", "G-2", "G-3", "G-4" and "G-5"; pp. 218, 219, 220, 221, 222 & 223, record)

Seizure proceedings was instituted in the Bureau of Customs in connection with the articles brought in by Eden Tan with the latter as claimant and the case was heard by Fidel Camaniag, Legal Officer of the MIA Customs House (pp. 3 & 4, tsn, Oct. 23, 1975). Pending the hearing of the seizure proceedings, Eden Tan filed with the customs authorities a request for a re-appraisal of the seized articles. The hearing officer of the legal division of the airport Customs House recommended a favorable action on the request for re-appraisal. The Chief Appraiser of the MIA Customs House disagreed with the recommendation of the legal division. Because of this disagreement, the airport customs collector referred the matter to the customs commissioner (pp. 12, 13, 14 & 15, tsn, id.).

The commissioner of customs created a committee to conduct a re-appraisal of the seized articles, and after the committee had rendered a report of their re-appraisal, the record of the case together with the committee's re-appraisal report was returned to the MIA Legal Division. The report of the re-appraisal committee appraising the seized articles at P47,993.00 was thereafter approved by the customs authorities (pp. 21, 22, 24, 25, 27, 29, 33, 34 & 35, tsn, id.)"[2]

The defense evidence on the other hand as found by the then Honorable Court of Appeals, runs this wise:

"x x x the evidence for the defense seeks to establish that the alleged precious stones and assorted jewelries were nothing but synthetic or imitation stones called "yag" and fancy jewelry; that upon a request for re-appraisal by appellant, in the seizure proceedings in the MIA Customhouse, the re-appraisal committee created by the Acting Commissioner of Customs reported the appraisal of the seized articles at P47,993.00 (Exh. 10, 10-A, 10-B, 10-C, a0-C-1, 10-C-2 and 10-C-3); that appellant testified that she accomplished a baggage declaration presented to her by the stewardess aboard the plane; that she declared in her baggage declaration all the baggage (sic) including one leather bag and bed cover, personal effects, synthetic stones, fancy jewelries, medicine, clothing and so forth; that this baggage declaration was not presented as evidence in court and, instead the prosecution just manifested in court that the baggage declaration could not be found; that the prosecution did not prove first the loss of the baggage declaration before proving the contents thereof by secondary evidence through the recollection of witnesses and that even admitting that the prosecution has proved the contents to be such that appellant stated only "personal effect" in her baggage declaration still the evidence is insufficient to sustain the conviction of appellant beyond reasonable doubt."[3]

After trial following a plea of not guilty upon arraignment, accused was convicted and thereafter sentenced to 12 years imprisonment, to pay a fine of P10,000.00, and to pay costs. Upon Motion for Reconsideration filed by the petitioner-appellant, however, the penalty was reduced merely to 4 years imprisonment and fine of P5,000.00. The articles seized by the customs authorities were ordered forfeited in favor of the government.

Upon appeal to the then Court of Appeals and as herein earlier stated, the judgment appealed from was affirmed in toto.

Hence, the instant appeal, petitioner contending that the then Court of Appeals erred:

1. In not acquitting the petitioner-appellant for failure of the prosecution not only to present in evidence the baggage declaration in question but also to prove its alleged loss during the trial of the case;
2. In not finding that the prosecuting fiscal's mere manifestation that he could not find the baggage declaration among the records handed to him although said documents was one of the enclosures stated in the indorsement to the fiscal's office dated November 18, 1974, and his manifestation "we will prove the loss" (tsn, September

30, 1975, pp. 9-12), are not the proof of loss or evidence of such loss as required by Section 4, Rule 130 of the Rules of Court to justify introduction and admission of secondary evidence of the alleged contents of the baggage declaration;

3. In not finding that secondary evidence of the alleged contents of the missing baggage declaration consisting of testimonies of prosecution witnesses were inadmissible as evidence there being no evidence presented by the prosecution to prove its alleged loss as required by Sec. 4, Rule 130 of the Rules of Court;

4. In not finding that there was valid and sufficient oral and true declaration made by petitioner regarding the synthetic stones and fancy jewelry on customs inspection after her arrival at the airport in compliance with memorandum Order No. 40 as amended by Memorandum Order No. 50 and the customs standard operating procedure laid down therein (Exhs. 2-A, 2-C, 2-D, 2-E, 2-F and 2-G; tsn, November 6, 1975, pp. 2-18, 67-71) allowing and giving incoming passengers the opportunity to make oral and true declaration of what they are carrying and bringing into this country;

5. In overlooking, disregarding or interpreting the significance of certain facts and circumstances of weight and influence appearing in the record, which if properly considered and correctly interpreted would probably change the result of this case; and

6. That the decision and resolution of denial of the Court of Appeals in this case are not in accord with law and the applicable jurisprudence.[4]

Petitioner-appellant centers her attack against the judgment of conviction on the alleged error of the trial court in admitting secondary evidence of the baggage declaration despite absence of sufficient proof of its loss. She contends that in such a case as the instant one, testimonial evidence is inadmissible to prove the contents of the said baggage declaration, because then it will be in violation of the best evidence rule as prescribed in Section 2(a) and Section 4 of Rule 130 of the Rules of Court.

It is conceded that petitioner's baggage declaration is the best evidence of the contents thereof. So much so that if the conviction lies solely on the said declaration and nothing more, there may be doubt as to her culpability. Hence, her acquittal may be warranted under the premises. Such however, is not the situation in the case at bar. The guilt of petitioner-accused has been sufficiently proven by Enrique Manansala, Ruben Diaz and Tingagun Macud.

Enrique Manansala is a customs police assigned at the Manila International Airport. Among his duties were to maintain peace and order within the customs area, investigate violation of the customs and tariff code, watch for goods illegally brought into the country, watch flights coming in particularly from Hongkong which are considered critical, and to conduct surveillance on passengers acting suspiciously. It was he who at about 8:15 in the evening of November 17, 1974 spotted the herein petitioner-appellant, a passenger of Flight No. 90 from Hongkong. He posted himself near petitioner, actually saw and examined petitioner's baggage declaration and noticed the entry therein reading "Personal Effects" only and nothing more. And that when questioned by customs examiner Macud as to whether she had anything more to declare, heard petitioner answered "nothing more, personal effects only". He also witnessed examiner Macud going over and inspecting petitioner's baggages. He actually saw one of the plastic bags brought in by the petitioner containing fancy jewelries hidden among fruits;[5] that he was ordered by Airport Customs Collector to help in the examination of the petitioner's baggages and together with examiner Macud, found upon further examination, precious stones sewed along the four (4) corners of a blanket found in petitioner's baggage and also other precious stones and jewelries sewed in the lining of petitioner's handbag.

Tingagun Macud, the examiner assigned to examine petitioner, declared that he examined petitioner's baggage; that he was shown petitioner's baggage declaration wherein no entry appears except "personal effects"; that before he started to examine petitioner's baggage, he asked petitioner whether she had anything more to declare and that

petitioner's answer was "nothing except personal effects"; that he then started examining petitioner's baggages thereby opening one of the plastic bags in the process and found assorted necklaces and pendants concealed underneath the fruits;<sup>[6]</sup> that proceeding further with his examination of petitioner's baggages, he discovered a bundle of pearl earrings in a plastic wrapper; that when he continued to examine another baggage of the petitioner, the latter told him "Huwag mong buksan ito"; that further examination made by him of the petitioner's baggage, yielded precious stones sewed along the four (4) corners of a bed cover blanket; and that thereafter, he informed Collector Dario of his findings and was later instructed by the latter to bring all the petitioner's baggages to his room for inventory.

The collective weight of the foregoing testimonies strongly and convincingly established that petitioner attempted to smuggle into the country jewelries and other precious stones which she failed to declare in violation of Section 3602 of the Customs and Tariff Code.

Anent petitioner's baggage declaration, there is no controversy as to its existence which had been sufficiently established not only by the prosecution's evidence but likewise by that of the defense. It was also clearly shown that said baggage declaration forms part of the various documents forwarded by the customs authorities to the Fiscal's Office upon the filing of the case against the petitioner. Unfortunately however, it can no longer be found among the papers making up the record of the case.

The said documents together with petitioner's baggage declaration were handed to and/or turned over to the trial fiscal. The place, therefore, where the baggage declaration was last known to be would be the office of the trial fiscal who was the last custodian of said document. Being a vital evidence in the prosecution of the case, it is safe to assume that the fiscal necessarily undertook and conducted a thorough search for the missing document. And failing to locate it, he was the only person who could knowledgeably inform the court of its loss.

The general rule concerning proof of a lost instrument is, that reasonable search shall be made for it in the place where it was last known to have been, and, if such search does not discover it, then inquiry should be made of persons most likely to have its custody, or who have some reasons to know of its whereabouts. No fixed rule as to the necessary proof to establish loss, or what constitutes reasonable search, can be formulated. The terms "reasonable search" and "in good faith", applied to proof of lost instruments, must be construed and defined under the facts in each particular case; there is no inflexible definition under which they can be applied to all cases. The sole object of such proof is, to raise a reasonable presumption, merely that the instrument is lost, and this is a preliminary inquiry addressed to the discretion of the judge.<sup>[7]</sup>

The loss may be shown by any person who knew the fact of its loss, or by any one who has made, in the judgment of the court, a sufficient examination of the place or places where the documents or papers of similar character are kept by the person in whose custody the document lost was, and has been unable to find it.<sup>[8]</sup>

The loss of the baggage declaration having been duly established resort to secondary evidence, is warranted under our rules of evidence<sup>[9]</sup> which provides:

"Section 2. Original writing must be produced; exceptions. — There can be no evidence of a writing the contents of which is the subject of inquiry, other than the original writing itself, except in the following cases:

'(a) When the original has been lost, destroyed, or cannot be produced in court.'

Section 4. Secondary evidence when original is lost or destroyed. — When the original writing has been lost or destroyed or cannot be produced in court, upon proof of its execution and loss or destruction or unavailability its contents may be proved by a copy or by a recital of its contents in some authentic document, or by the recollection of witnesses."

It is now beyond dispute that petitioner did bring into the country highly dutiable goods which she hid beneath the linings of her bag and the corners of the bed cover she was carrying. It is hard to imagine that an incoming passenger who had all the intentions of declaring a large quantity of fancy jewelries and stones (3,000 pieces) would undertake the trouble of painstakingly and meticulously sewing said articles one by one beneath the linings of her bag and the corners of a blanket only to tear open the linings and detach the articles one by one for inspection. Her tenuous explanation that she did it for security reasons is too flimsy a pretense to be admitted as true. Records show that she did not immediately disclose the hiding places of the stones and even told the examiner that she was not hiding anything.[10] She only talked of the hidden pieces of jewelries and stones when examiner Macud had discovered them under the fruits inside a plastic bag; thereby telling the examiner, "Sir, my fancy jewelries and stones are hidden".

We fully subscribe to the Court of Appeals' pronouncement that:

"The mere fact that the prosecution failed to introduce any copy of the baggage declaration filed by accused, does not entitle her to an acquittal. It has been established that accused cleverly hid the assorted jewelries, appraised at P47,993.00, beneath the lining of her handbag. It has also been established thru the testimonies of customs authorities that accused declared that she was carrying personal effects only. Although, according to accused, she actually declared that she was carrying assorted jewelries, this is doubtful considering that she would not have hidden the jewelries cleverly beneath the lining of her handbag if she had really declared them." [11]

WHEREFORE, the instant petition is DISMISSED with costs against petitioner.

**SO ORDERED.**

Makasiar, (Chairman), Concepcion, Jr., Abad Santos, and Escolin, JJ., concur.

Aquino, J., in the result.

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[1] Pages 4, 5, 6 & 7 of Appellee's Brief.

[2] Pages, 4, 5, 6 & 7 of the People's Brief.

[3] Page 8, Decision.

[4] Petitioner's Brief, pages 7-9.

[5] Pages 9, 10, 15, 16, 17 and 19, tsn, September 30, 1975.

[6] Pages 29-34, tsn, October 14, 1975.

[7] Francisco's Evidence, 1973 Ed., Vol. VII, p. 138. (Citing Kenniff v. Caulfield (1903) 140 Cal. 34, 73, p. 803).

[8] Paylago v. Jarabe, 22 SCRA 1247, 1255.

[9] Rule 130, Sec. 2(a) in relation to Sec. 4.

[10] Petitioner's Brief, page 23.

[11] Annex "A", pages 5-6.

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