



Republic of the Philippines  
**Supreme Court**  
 Manila

**FIRST DIVISION**

**ALVIN MERCADO,**  
 Petitioner,

**G.R. No. 167510**

Present:

- versus -

SERENO, C.J.,  
 LEONARDO-DE CASTRO,  
 BERSAMIN,  
 PEREZ, and  
 PERLAS-BERNABE, JJ.

**PEOPLE OF THE PHILIPPINES,**  
 Respondent.

Promulgated:

**JUL 08 2015**

x-----x

**DECISION**

**BERSAMIN, J.:**

This appeal is taken from the decision promulgated on March 18, 2005 in CA-G.R. CR No. 28263 entitled *People of the Philippines v. Alvin Mercado and Lito Seña/Lito Senia*,<sup>1</sup> whereby the Court of Appeals (CA) affirmed the judgment rendered on November 25, 2003 by the Regional Trial Court (RTC), Branch 21, in Manila convicting the petitioner of the violation of Section 3602, in relation to Section 2503, of the *Tariff and Customs Code of the Philippines* (TCCP) charged herein.<sup>2</sup>

**Antecedents**

In the information dated October 1, 2001, the petitioner and his co-accused were charged in the RTC with the violation of Section 3602, in relation to Section 2503, of the TCCP, committed as follows:

That on or about July 29, 2000, at Port Area, Manila and within the jurisdiction of this Honorable Court, the above-named accused did, then and there willfully, unlawfully and feloniously made (sic) an entry of:

<sup>1</sup> *Rollo*, pp. 7-14; penned by Associate Justice Eugenio S. Labitoria (retired), with Associate Justice Amelita G. Tolentino (retired) and Associate Justice Lucenito N. Tagle (retired) concurring.

<sup>2</sup> *Id.* at 62-72; penned by Judge Amor A. Reyes.

- a) 6,728 yards fabric;
- b) 1,937 pcs. assorted bags of Ferragamo, Prada and Polo brands;
- c) 3,027 pcs. jeans with Levi's brand;
- d) 586 sandals;
- e) 312 pairs of rainbow shoes;
- f) 120 pairs step-in;
- g) 77 pairs of slippers;
- h) 24 pcs. of pillows;
- i) 36 dozens of shirts with Polo brand;
- j) 2 cartons of assorted children's wear;
- k) 8 pcs. of folding chairs;
- l) 3 cartons of assorted groceries;
- m) 120 pcs. of mini-racer toy cars;
- n) 4 pcs. of race track;
- o) 48 pcs. of gripmate golf set cover;
- p) 10 cartons of sampaloc in 6 packs per carton;
- q) 40 pcs. raincover folf (sic) bag;
- r) 1 carton of wood tray;
- s) 240 pcs. golf gloves;
- t) 12 pcs. of plastic vase.

by means of false and fraudulent invoice and declaration as regards the true kind, nature, quality and quantity of the goods such that the goods indicated or declared therein were 162 cartons of "personal effects of no commercial value", when in truth and in fact, they were the aforesaid various articles, so as to pay less than the amount legally due to the Government, to its damage and prejudice.

CONTRARY TO LAW.<sup>3</sup>

Only the petitioner was arraigned because Seña remained at large. The petitioner pleaded *not guilty* to the information.<sup>4</sup> Hence, the case was tried and decided only as to the petitioner.

The Prosecution established that a shipment from Bangkok, Thailand had arrived at the Manila International Container Port (MICP) on July 29, 2000 on board the vessel Sumire;<sup>5</sup> that the shipment, which was declared under Bill of Lading No. NYKS481501191 to consist of one 1 x 20 container of assorted men's and ladies' wearing apparel, textile and accessories in 162 packages;<sup>6</sup> that the shipment was consigned to Al-Mer Cargo Management, an entity owned and managed by the petitioner;<sup>7</sup> that sensing a possible violation of the TCCP, Atty. Angel L. Africa, then the Director of the Customs Investigation and Intelligence Services, issued Alert Order No. A/CI/20000731-105 on July 31, 2000 directing Customs Special Agent Roberto A. Tibayan (SA Tibayan) to witness the 100% examination

---

<sup>3</sup> Records, pp. 1-2.

<sup>4</sup> Id. at 72.

<sup>5</sup> Id. at 35.

<sup>6</sup> Id. at 35-37.

<sup>7</sup> Id. at 27, 35-36.

of the shipment by the assigned customs examiner;<sup>8</sup> that in the meanwhile, Al-Mer Cargo Management filed an Informal Import Declaration and Entry (IIDE) and Permit to Deliver through its broker, Consular Cargo Services, describing the items in the shipment as “*personal effects, assorted mens and ladies wearing apparels, (sic) textile and accessories;*”<sup>9</sup> that upon examination of the shipment on August 7, 2000, Customs Examiner Rogelio Dizon and SA Tibayan found the shipment to contain general merchandise in commercial quantities instead of personal effects of no commercial value;<sup>10</sup> and that, accordingly, the shipment was placed under Seizure Identification No. 00-092 MICP.<sup>11</sup>

The Prosecution further established that pending the seizure and forfeiture proceedings, the petitioner sought the settlement of the case in exchange for the payment of the proper taxes and duties, plus 20% penalty; that in his 2<sup>nd</sup> Indorsement dated February 23, 2001, then Customs Commissioner Titus B. Villanueva approved the offer of settlement amounting to ₱85,000.00 and the release of the shipment with the exception of the infringing Levi’s jeans and assorted bags;<sup>12</sup> that despite the payment of the settlement, the petitioner and Seña were still charged with the violation of Section 3602 of the TCCP, in relation to its Section 2503, and with the violation of the *Intellectual Property Code*;<sup>13</sup> and that through his resolution dated September 27, 2001,<sup>14</sup> Prosecutor Juan C. Navera of the Anti-Smuggling Task Force of the Department of Justice found probable cause against the petitioner and Seña for the violation of Section 3602 of the TCCP.

In his defense, the petitioner asserted that he had only accommodated the shipment upon the request of Seña and Apolonio Viray, President of Worth Brokerage Corporation;<sup>15</sup> that Seña had represented to him that the shipment contained only personal and household effects;<sup>16</sup> that he did not have any participation in following up the clearance for the shipment; that as a licensed customs broker, his signature did not appear in the informal entry; that he executed a deed of assignment over the shipment in favor of Benita Ochoa;<sup>17</sup> and that the broker prepared the import entry declaration.<sup>18</sup>

On November 25, 2003, the RTC rendered its decision finding the petitioner guilty as charged, to wit:

---

<sup>8</sup> Id. at 37.

<sup>9</sup> Id. at 35-36.

<sup>10</sup> Id. at 38-39.

<sup>11</sup> Id. at 27.

<sup>12</sup> Id. at 23.

<sup>13</sup> Id. at 4.

<sup>14</sup> Id. at 4-8.

<sup>15</sup> Id. at 16.

<sup>16</sup> Id.

<sup>17</sup> Id. at 18-19.

<sup>18</sup> Id. at 35.

WHEREFORE, premises considered, the Court finds accused ALVIN MERCADO GUILTY beyond reasonable doubt as principal of the crime charged and is hereby sentenced to suffer the penalty of TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY to FOUR (4) YEARS, TWO (2) MONTHS of *prision correccional* as maximum and to pay the costs.

Accordingly, the bond posted for the provisional liberty of the accused is hereby CANCELLED.

It appearing that accused Lito Sena has not been apprehended nor voluntarily surrendered, let warrant be issued for his arrest and the case against him be ARCHIVED to be reinstated upon his apprehension.

SO ORDERED.<sup>19</sup>

On appeal, the petitioner assigned the following errors, to wit:

I

THE COURT A QUO ERRED WHEN IT OVERLOOKED THE FACT THAT ACCUSED DID NOT IN ANYWAY WILFULLY, UNLAWFULLY AND FELONIOUSLY MADE (*sic*) AN ENTRY OF THE SUBJECT IMPORTED ARTICLES BY MEANS OF FALSE AND FRAUDULENT INVOICE AND DECLARATION.

II

THE COURT A QUO ERRED WHEN IT FOUND THAT ACCUSED IS GUILTY BEYOND REASONABLE DOUBT IN THE ABSENCE OF CONVINCING EVIDENCE.

II

THE COURT A QUO ERRED WHEN IT FAILED TO EXPRESS CLEARLY AND DISTINCTLY THE FACTS AND THE LAW ON WHICH IT BASED ITS DECISION TO CONVICT ACCUSED-APPELLANT OF THE CRIME CHARGED.<sup>20</sup>

On March 18, 2005, however, the CA affirmed the RTC,<sup>21</sup> viz.:

Noteworthy to stress that “*unless it is shown that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight or substance that would otherwise affect the result of the case, its findings will not be disturbed on appeal*” and “*accorded finality.*” The rule is not, however, absolute and admit certain exceptions which must be satisfactory established within its ambit in order for it to find application. Contrary to accused-appellant’s claim, an extensive perusal of the records do not show the existence of the exceptions in the instant case which, if considered, would have affected the result of the case. Moreover, from the allegations propounded, accused-appellant failed to show persuasive proof relative to the exceptions aforesaid. The appreciation of evidence and assessment of witnesses by public respondent could need not be

---

<sup>19</sup> *Rollo*, p. 72.

<sup>20</sup> *Id.* at 11-12.

<sup>21</sup> *Id.* at 12-13.

disturbed on this appeal absent any showing of patent misapprehension or misapplication involving the same. The respondent court, in this case, has not exercised its judgment in despotic or arbitrary manner in the appreciation of the evidence or assessment of the witnesses which would warrant reversal of the appealed decision.

In any event, this court does not subscribe on the argument raised by the accused appellant that nothing is concrete on the findings made by public respondent court to warrant his conviction in view of the foregoing.

Lastly, the assailed decision narrated clearly the chronological incident in arriving at its conclusion and, to reiterate, no more than the assessment of witnesses and evaluation of the evidence adduced and presented wherefrom the assailed decision was based. Hence, the third issue above-noted finds no application in the case at bar.

**WHEREFORE**, considering the foregoing, the petition is hereby **DENIED** and the decision of the Regional Trial Court Branch No. 21 of Manila in Criminal Case No. 01-196770 for violation of Sec. 3602 of the Tariff and Customs Code is hereby **AFFIRMED**. Accused-appellant, Alvin B. Mercado, is sentenced hereby to suffer the indeterminate penalty of **TWO (2) YEARS, FOUR (4) MONTHS** and **ONE (1) DAY** of *prision correccional*, as minimum to **FOUR (4) YEARS** and **TWO (2) MONTHS** of *prision correccional*, as maximum and to pay the costs.

**SO ORDERED.**<sup>22</sup>

### Issues

Hence, this appeal, with the petitioner urging the following, namely:

#### I.

WHETHER OR NOT ACCUSED MAY BE HELD GUILTY FOR VIOLATION OF SECTION 3602 IN RELATION TO SECTION 2503 OF THE TARIFF AND CUSTOMS CODE WHEN EVIDENCES PROVE THAT HE DID NOT IN ANY WAY WILFULLY, UNLAWFULLY AND FELONIOUSLY MADE (sic) AN ENTRY OF THE SUBJECT IMPORTED ARTICLES BY MEANS OF FALSE AND FRAUDULENT INVOICE AND DECLARATION AND IN THE ABSENCE OF CRIMINAL INTENT.

#### II.

WHETHER OR NOT PETITIONER MAY BE HELD GUILTY FOR VIOLATION OF SECTION 3601 OF THE TARIFF AND CUSTOMS CODE NOTWITHSTANDING THE FACT THAT HE WAS CHARGED FOR VIOLATION OF SEC. 3602 OF THE TARIFF AND CUSTOMS CODE.<sup>23</sup>

The petitioner argues that it was not him, but Rolando Saganay, a licensed customs broker from Consular Cargo Services, who had made and

---

<sup>22</sup> Id. at 12-13.

<sup>23</sup> Id. at 25-26.

signed the IIDE;<sup>24</sup> that he did not participate in following up the clearance of the shipment;<sup>25</sup> that the entry of the cargo was not made through a false or fraudulent invoice, declaration, letter or paper;<sup>26</sup> that the import declaration was made in accordance with the shipping documents that were entirely prepared by the supplier from the country of export;<sup>27</sup> that he relied in good faith on the entries prepared by Saganay, which he presumed to be true and correct;<sup>28</sup> and that he could not be held criminally liable for the violation of Section 3601 of the TCCP, an offense for which he was not charged.<sup>29</sup>

### **Ruling of the Court**

The appeal is meritorious.

The provisions of law under which the petitioner was prosecuted and convicted were Section 2503 and Section 3602 of the TCCP, which state:

Section 2503. *Undervaluation, Misclassification and Misdeclaration in Entry.* – When the dutiable value of the imported articles shall be so declared and entered that the duties, based on the declaration of the importer on the face of the entry, would be less by ten percent (10%) than should be legally collected, or when the imported articles shall be so described and entered that the duties based on the importer’s description on the face of the entry would be less by ten percent (10%) than should be legally collected based on the tariff classification, or when the dutiable weight, measurement or quantity of imported articles is found upon examination to exceed by ten percent (10%) or more than the entered weight, measurement or quantity, a surcharge shall be collected from the importer in an amount of not less than the difference between the full duty and the estimated duty based upon the declaration of the importer, nor more than twice of such difference: *Provided*, That an undervaluation, misdeclaration in weight, measurement or quantity of more than thirty percent (30%) between the value, weight, measurement, or quantity declared in the entry, and the actual value, weight, quantity, or measurement shall constitute a *prima facie* evidence of fraud penalized under Section 2530 of this Code: *Provided, further*, That any misdeclared or undeclared imported articles/items found upon examination shall ipso facto be forfeited in favour of the Government to be disposed of pursuant to the provisions of this Code

**When the undervaluation, misdescription, misclassification or misdeclaration in the import entry is intentional, the importer shall be subject to the penal provision under Section 3602 of this Code.**

Section 3602. *Various Fraudulent Practices Against Customs Revenue.* - Any person who makes or attempts to make any entry of imported or exported article by means of any false or fraudulent invoice,

---

<sup>24</sup> Id. at 30.

<sup>25</sup> Id. at 30-32.

<sup>26</sup> Id. at 32-35.

<sup>27</sup> Id. at 35.

<sup>28</sup> Id.

<sup>29</sup> Id. at 38-44.

declaration, affidavit, letter, paper or by any means of any false statement, written or verbal, or by any means of any false or fraudulent practice whatsoever, or knowingly effects any entry of goods, wares or merchandise, at less than true weight or measures thereof or upon a false classification as to quality or value, or by the payment of less than the amount legally due, or knowingly and willfully files any false or fraudulent entry or claim for the payment of drawback or refund of duties upon the exportation of merchandise, or makes or files any affidavit abstract, record, certificate or other document, with a view to securing the payment to himself or others of any drawback, allowance, or refund of duties on the exportation of merchandise, greater than that legally due thereon, or who shall be guilty of any willful act or omission shall, for each offence, be punished in accordance with the penalties prescribed in the preceding section.

Section 3602 enumerates the various prohibited fraudulent practices, like the entry of imported or exported articles by means of any false or fraudulent invoice, statement or practice; the entry of goods at less than the true weight or measure; or the filing of any false or fraudulent entry for the payment of drawback or refund of duties.<sup>30</sup> The following specific acts are punishable under Section 3602:

1. Making or attempting to make any entry of imported or exported article by means of any false or fraudulent invoice, declaration, affidavit, letter, or paper;
2. Making or attempting to make any entry of imported or exported article by means of any false statement, written or verbal;
3. Making or attempting to make any entry of imported or exported article by means of any false or fraudulent practice whatsoever;
4. Knowingly effects any entry of goods, wares or merchandise, at less than true weight or measures thereof;
5. Knowingly effects any entry of goods, wares or merchandise upon a false classification as to quality or value;
6. Knowingly effects any entry of goods, wares or merchandise by the payment of less than the amount legally due;
7. Knowingly and willfully files any false or fraudulent entry or claim for the payment of drawback or refund of duties upon the exportation of merchandise;

---

<sup>30</sup> *Jardeleza v. People*, G.R. No. 165265, February 6, 2006, 481 SCRA 638, 662.

8. Knowingly and willfully makes or files any affidavit abstract, record, certificate or other document, with a view to securing the payment to himself or others of any drawback, allowance, or refund of duties on the exportation of merchandise, greater than that legally due thereon.

In alleging the violation of the foregoing legal provisions, the information specified that the petitioner had made an entry –

x x x **by means of false and fraudulent invoice and declaration** as regards the true kind, nature, quality and quantity of the goods such that the goods indicated or declared therein were 162 cartons of “personal effects of no commercial value”, when in truth and in fact, they were the aforesaid various articles, **so as to pay less than the amount legally due to the Government**, to its damage and prejudice.<sup>31</sup> (Emphasis supplied)

The act thereby imputed against the petitioner – *making an entry by means of false and fraudulent invoice and declaration* – fell under the first form of fraudulent practice punished under Section 3602 of the TCCP. The elements to be established in order to convict him of the crime charged are, specifically: (1) there must be an entry of imported or exported articles; (2) the entry was made by means of any false or fraudulent invoice, declaration, affidavit, letter, or paper; and (3) there must be intent to avoid payment of taxes.

It is relevant to clarify that the term *entry* as used in the TCCP is susceptible of any of the following three meanings, to wit: (1) the documents filed at the Customs house; or (2) the submission and acceptance of the documents; or (3) the procedure of passing goods through the Customs house. Customs declaration forms or customs entry forms required to be accomplished by the passengers of incoming vessels or passenger planes are embraced in the section.<sup>32</sup>

The petitioner was not charged with making an entry of goods at less than the true weight or measure, or the filing of any false or fraudulent entry for the payment of drawback or refund of duties, other acts punishable under Section 3602 of the TCCP. He was specifically charged *only* of making an entry by means of a false and fraudulent invoice and declaration. The importance of properly alleging the nature and cause of the accusation in the information should not ever be taken for granted by the State. To determine whether or not the guilt of the accused was established beyond reasonable doubt, therefore, the Court must look at the text and tenor of the information to determine and to know what was the offense charged against him. It is

---

<sup>31</sup> Records, p. 2.

<sup>32</sup> *Jardeleza v. People*, supra note 30, at 663.



elementary that to try him for and convict him of an offense other than that charged in the information would be violative of his Constitutional right to be informed of the nature and cause of the accusation. As such, he could not be tried for and convicted of a crime, even if duly proved, unless the crime was properly and fully alleged or necessarily included in the information filed against him.<sup>33</sup>

In finding the petitioner guilty as charged, the RTC observed as follows:

As evidence stands, there was really a misdeclaration of the shipment consigned to Almer Cargo Management covered by Bill of Lading No. NYKS-48150191 and Informal Entry No. 45929. Upon examination of the shipment, the BOC officers discovered that the declaration “as personal effects and of no commercial value” is not accurate. Contrary to the declaration of personal effects, the shipment consisted of general merchandise on commercial quantity such as fabrics, assorted bags of Ferragamo, Prada and Polo, children’s wear, shoes, slippers etc. which were brand new and not “used”. As the misdeclaration would benefit accused, he is therefore, liable as charged.

Supreme Court ruling is to the effect that under the Tariff and Customs Code, declarations and statements contained in the Import Entry and Permit to Deliver Imported Goods are presumed to be true and correct under the penalties of falsification and perjury. Moreover, descriptions on entries and other documents are admission against interest and presumptively correct. (*Caltex (Phil) v. CA et al.* G.R. No. 104781, July 10, 1998).

To the mind of the Court the prosecution should not have spared Benita Ochoa (alleged assignee of the shipment) as the real owner of the shipment (par. 2 Deed of Assignment, pp. 18, record) she should have been impleaded as a co-accused. All persons working behind the shipments should have suffered the consequences.<sup>34</sup>

After reviewing the records, the Court holds that the petitioner deserved an acquittal because the Prosecution did not prove his guilt beyond reasonable doubt.

It is undisputed that the customs documents (like the IIIDE and Permit to Deliver) were filed with and the imported goods passed through the customs authorities, thereby satisfying the first element of entry of imported articles. However, the second and third elements were not established beyond reasonable doubt. Although there was a discrepancy between the declaration made and the actual contents of the shipment, the petitioner firmly disavowed his participation in securing the clearance for the shipment as well as in preparing and filing the import documents.<sup>35</sup> He insisted that

---

<sup>33</sup> *Patula v. People*, G.R. No. 164457, April 11, 2012, 669 SCRA 135, 146.

<sup>34</sup> *Rollo*, p. 71.

<sup>35</sup> TSN of October 1, 2002, pp. 15-16.

being only the consignee of the shipment, he did not file the informal entry in the Bureau of Customs; that based on the documents, the filer was Consular Cargo; that he had no knowledge about the entry; that it was the broker who prepared the import entry declaration; that the papers were submitted by Viray;<sup>36</sup> and that only Saganay signed the IIDE.<sup>37</sup>

In this regard, the Office of the Solicitor General (OSG) contends that the declaration made in the IIDE by Saganay as the petitioner's agent-broker bound the latter as the consignee considering that he did not repudiate the declaration.<sup>38</sup>

We disagree with the contention of the OSG. The only basis to hold the petitioner criminally liable under the declaration made by Saganay would be if the two of them had acted *pursuant to a conspiracy*.<sup>39</sup> But even if they had acted pursuant to a conspiracy, there must be an allegation to that effect in the information. We note, however, that the information did not charge Saganay as the co-conspirator of the petitioner, thereby removing any basis for any inference in that regard. Neither did the information aver that Saganay was at all an accomplice of the petitioner. Under Article 18 of the *Revised Penal Code*, an accomplice is one who, without being a principal either by direct participation, or by inducement, or by indispensable cooperation, cooperates in the execution of the offense by previous or simultaneous acts. It would violate the constitutional right of the petitioner to be informed of the charge brought against him if he were held criminally responsible for Saganay's act or omission on the basis that Saganay had been his agent in the transaction. In other words, the importer or consignee should not be held criminally liable for any underdeclaration or misdeclaration made by the broker unless either a conspiracy between them had been alleged and proved, or the Prosecution sufficiently established that the importer had knowledge of and actively participated in the underdeclaration or misdeclaration. Indeed, to allow the act or omission of Saganay to bind the petitioner would be unacceptable under the principle of *res inter alios acta* embodied in Section 28,<sup>40</sup> Rule 130 of the *Rules of Court*.

The OSG further posits that the petitioner, as the importer, warranted that the declarations by Saganay, which were under oath and subject to the penalties of falsification and perjury, were true and correct. Hence, the petitioner should be held liable upon such declarations.

---

<sup>36</sup> TSN of October 21, 2002, pp. 23-25.

<sup>37</sup> Records, p. 35.

<sup>38</sup> *Rollo*, p. 120.

<sup>39</sup> Section 30, Rule 130 of the *Rules of Court* provides:

Section 30. *Admission by conspirator*. - The act or declaration of a conspirator relating to the conspiracy and during its existence, may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act of declaration. (27)

<sup>40</sup> Section 28. *Admission by third party*. - The rights of a party cannot be prejudiced by an act, declaration, or omission of another, except as hereinafter provided. (25a)

The records of the case do not support the OSG's position. Although the import documents, particularly in the IIDE, Permit to Deliver Import Goods and Bill of Lading, showed Al-mer Cargo Management as the consignee or importer, it was only Saganay who made the sworn declaration in the IIDE inasmuch as only his name and signature appeared therein.<sup>41</sup> The petitioner's name was nowhere to be found in said documents,<sup>42</sup> which further showed no trace of his signature, or his participation in their preparation, or his conformity with their contents. Verily, the concrete proof showing that he had affirmed the declarations under oath, as to thereby subject himself to criminal responsibility for either falsification or perjury, was entirely lacking.

Even assuming that the petitioner was involved in the preparation of the import documents, a clear showing of his intent to falsify the same in order to avoid the payment of duties and taxes would still be wanting. The Customs officials themselves testified that the declarations made in the import documents largely depended on the description of the goods made by the exporter or shipper from a foreign country. In his testimony, Customs Examiner Dizon explained so:

Q As Customs Examiner of the Informal Entry Division since 1991, are you aware of the Customs laws, Customs procedures and practices with respect to the importation under the Informal Entry?

A Yes, Sir.

Q And you are also familiar with the documents require (sic) to be attached to the Formal Entry?

A Yes, Sir.

Q And one of the attachments what you called the commercial invoice, is that correct?

A Yes, Sir.

Q In your experience as Customs Examiner usually this commercial invoice prepared by the exporter or supplier, isn't it?

A Yes, Sir.

Q And this exporter or supplier is usually based in the Country where the goods were manufactured or were bought by the importer, is that right?

A Yes, Sir.

x x x x

---

<sup>41</sup> Records, p. 35.

<sup>42</sup> Id. at 35-36, 152-154.

Q In your experience as Customs Examiner, usually the description appearing in the bill of lading is also the description appearing in the commercial invoice, is that correct?

A Yes, Sir.

Q In the description of the cargo appearing in the bill of lading is likewise the description appearing in the permit to deliver imported goods, is that correct?

A Yes, Sir.

x x x x

Q x x x Is it not a fact, Mr. Witness, that it is a standard practice at the Bureau of Customs that the description appearing in the permit to deliver imported goods is a general description of the cargo, isn't it?

A Yes, Sir.

Q And that the informal entry and import declaration almost always involved the specific description of the cargo?

A Yes Sir.

x x x x

Atty. Leabres:

So the difference in the two documents is that, the permit to deliver imported goods contained in a general description while the informal import declaration of entry contained the specific description there of the cargo covered by the informal entry, is that correct?

A Yes, Sir.<sup>43</sup>

Similarly, Atty. Domingo Leguiab stated:

Q In your experience, Mr. witness, as a Hearing Officer of the Bureau of Customs, is that a fact that these shipment documents are prepared not by the importer but by the supplier?

A That is the procedure.

Q And, therefore, the importer has no hand in the preparation of this shipping document?

A Precisely.

Q And, whatever declaration misrepresentations are made not by the importer but by the supplier?

---

<sup>43</sup> TSN of June 17, 2002, pp. 3-4, 6, 16-17.

A Correct, because it's the supplier which prepare (sic) the shipping documents where the declaration are being made.<sup>44</sup>

The petitioner's assertion that he had relied in good faith on the declarations made by his broker, who had based them on the information provided in the shipping documents by the foreign exporter, stood unrebutted by the Prosecution. If that was so, his intentional or deliberate participation in any misdeclaration or underdeclaration could not be properly presumed. In so saying, we cannot but conclude that the trial court wrongly found him criminally liable, for, as aptly observed in *Transglobe International, Inc. v. Court of Appeals*:<sup>45</sup>

In the appeal before the CTA, respondent Commissioner of Customs contended that the seizure of the shipment was made also upon a finding that the documents covering it were forged, thus constituting fraud as defined in Sec. 1, par. 1. a., CMO-87-92. This Section is of the same tenor as Sec. 2530, pars. (f) and (m), subpars. 3, 4 and 5, which for emphasis *deals with falsities committed by the owner, importer, exporter or consignee or importation/exportation through any other practice or device*. In *Aznar*, as reiterated in *Farolan*, we clarified that the fraud contemplated by law must be actual and not constructive. It must be intentional, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some right. The misdeclarations in the manifest and rider cannot be ascribed to petitioner as consignee since it was not the one that prepared them. As we said in *Farolan*, if at all, the wrongful making or falsity of the documents can only be attributed to the foreign suppliers or shippers. Moreover, it was not shown in the forfeiture decision that petitioner had knowledge of any falsity in the shipping documents. District Collector Rosqueta's comment on petitioner's second motion for reconsideration is enlightening: "While the shipment was misdeclared in the rider and the manifest, the consignee is innocent of the facts stated therein as it had no hand in their preparation or issuance." We mention in passing that in having thus stated, she in effect nullified her prior finding that petitioner violated the cited provisions of the *Tariff and Customs Code* as amended. Consequently, we agree with the finding of the CTA that fraud was not committed by petitioner in the importation of the shipment.

We also made a similar observation in *Remigio v. Sandiganbayan*,<sup>46</sup> which involved a customs broker, to wit:

Petitioner Remigio did not make or attempt to make an entry of imported articles by means of any false or fraudulent invoice, declaration, affidavit, letter, paper, or by means of any false statement, verbal or oral, or by means of any false or fraudulent practice whatsoever. x x x

x x x x

---

<sup>44</sup> TSN of February 24, 2003, pp. 37-38.

<sup>45</sup> G.R. No. 126634, January 25, 1999, 302 SCRA 57, 68-69.

<sup>46</sup> G.R. No. 145422-23, January 18, 2002, 374 SCRA 114, 122-123.

Accused Erwin C. Remigio, as customs broker, prepared the entry covering the shipment based on the bill of lading, the invoice, the packing list, letter of credit, the import entry declaration and the Central Bank Release Certificate. The given address of Borham Trading was at 37 Harvard Street, Quezon City. There was nothing in the documents to show that there was anything amiss in the shipment or the covering documents. A customs broker is not required to go beyond the documents presented to him in filing an entry on the basis of such documents.

Section 3601 provides that x x x 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 x x x.

Accused Remigio did not fraudulently assist in the importation of any article contrary to law nor facilitated its transportation, **knowing** the same to have been imported contrary to law. All accused Remigio did was to prepare the import entry based on the shipping and other documents required by the Bureau of Customs and file the same.

Lastly, the petitioner's participation in the settlement payment and in the release of the shipment could not be given any meaning or import adverse to his penal interest. Such payment and release were actually irrelevant to the criminal act charged against him.

As a final word, it is timely to reiterate *People v. Mamalias*,<sup>47</sup> where the Court has reminded with emphasis about the main objective of the courts in the dispensation of justice in criminal prosecutions:

We emphasize that the great goal of our criminal law and procedure is not to send people to the gaol but to do justice. The prosecution's job is to prove that the accused is guilty beyond reasonable doubt. Conviction must be based on the strength of the prosecution and not on the weakness of the defense – the obligation is upon the shoulders of the prosecution to prove the guilt of the accused, not on the accused to prove his innocence. Thus, when the evidence of the prosecution is not enough to sustain a conviction, it must be rejected and the accused absolved and released at once.

**WHEREFORE**, the Court **REVERSES** and **SETS ASIDE** the decision promulgated on March 18, 2005 by the Court of Appeals in C.A.-G.R. CR No. 28263 entitled *People of the Philippines v. Alvin Mercado and*

---

<sup>47</sup> G.R. No. 128073, March 27, 2000, 328 SCRA 760, 773.


*Lito Seña/Lito Senia*; and **ACQUITS** petitioner **ALVIN MERCADO** for failure of the State to establish his guilt beyond reasonable doubt.


No pronouncements on costs of suit.

**SO ORDERED.**

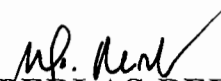
  
**LUCAS P. BERSAMIN**  
Associate Justice

**WE CONCUR:**

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice


  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

  
**JOSE PORTUGAL PEREZ**  
Associate Justice

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice