

[G.R. No. 193313, March 16, 2016]

**ERNIE IDANAN, NANLY DEL BARRIO AND MARLON PLOPENIO,
PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

D E C I S I O N

PEREZ, J.:

Before us is a Decision^[1] of the Court of Appeals dated 29 March 2010 in CA-G.R. CR No. 30729 affirming the Decision^[2] dated 22 February 2007 of the Regional Trial Court (RTC), Branch 42 of Virac, Catanduanes finding petitioners Ernie Idanan (Idanan), Nanly Del Barrio (Del Barrio) and Marlon Plopenio (Plopenio), together with Roberto Vargas (Vargas) and Elmer Tulod (Tulod) guilty beyond reasonable doubt of illegal possession of lumber under Section 68 of Presidential Decree (PD) No. 705, as amended.

The petitioners were charged in the following Information:

That on or about the 16th day of October 2005 in the afternoon at [B]arangay San Miguel, [M]unicipality of Panganiban, [P]rovince of Catanduanes, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused[,] with intent to gain, conspiring, confederating and helping one another did there and then (sic) willfully, unlawfully and feloniously possess, and in control of twenty nine (29) pieces of narra lumber with gross volume of 716.48 board feet or 1.69 cubic meter valued at Php275,844.80, Philippine currency loaded in a truck bearing Plate No. UMU-424 without necessary permit, license or documents required under the existing laws, rules and regulations of the DENR to the damage and prejudice of the Republic of the Philippines in the amount of Php275,844.80.^[3]

During trial, the prosecution presented the police officers who apprehended petitioners. Their version goes:

In the morning of 16 October 2005, the PNP headquarters of the Municipality of Panganiban, Province of Catanduanes received an information that a group of illegal loggers will be transporting narra flitches^[4] along Kilometer 11, 12 or 13 in Panganiban. At around 3:30 p.m., the OIC Chief of Police P/Inspector Chito Oyardo and five (5) other policemen were patrolling Kilometer 12 in a motorbike and a compactor when they spotted an idling Isuzu Elf truck loaded with lumber. The policemen approached the truck. They found out that Idanan was the driver while Del Barrio and Plopenio were the passengers. Vargas and Tulod were seen hauling lumber to be loaded into the truck. Petitioners were not able to produce any document authorizing them to transport lumber so they were placed under arrest. PO1 Ferdinand Bobiles took photographs of the truck, the seized lumber and the

accused. Thereafter, petitioners were first brought to the police station before they were brought to Camp Camacho in Virac, Catanduanes.^[5]

The defense, on the other hand, denied the charge. Idanan, Del Barrio and Plopemo testified that while they were traversing Kilometer 12, they were flagged down by policemen. One of them borrowed the truck. Idanan, the driver of the truck, obliged. One of the policemen drove the truck for about 100 meters while petitioners trailed the truck by foot. They then saw the policemen load narra flitches into the truck. Not one of them questioned the police out of fear. To petitioners' surprise, they were then arrested and ordered to follow the policemen to the police station.^[6] Vargas and Tulod claimed that they were going to Caramoran and they hitched a ride with Idanan.

The defense presented a Certification signed by *Punong Barangay* Elias D. Obierna (Elias) and *Barangay Tanod* Benito P. Obierna (Benito) certifying that the police intercepted the truck driven by Idanan; that it was found empty; and that the police officers asked the driver of the truck to deliver the logs to the Municipal Office/Police Office Station of Panganiban, Catanduanes.^[7]

The Obiernas initially denied that they executed the Certification. Elias later on clarified that while he signed the Certification, he was not present at the time of the apprehension and had no personal knowledge that the truck was empty. Elias claimed that Santiago Idanan forced him to sign the Certification.^[8] Benito was present during the incident. He allegedly saw firewood on two trucks and heard the policemen instructing a certain son of Agoy to load the lumbers into the truck.^[9]

On 22 February 2007, the RTC found petitioners guilty beyond reasonable doubt of illegal possession of lumber. The dispositive portion reads:

WHEREFORE, the prosecution having proved the guilt of all the accused beyond reasonable doubt, the Court hereby sentences accused Ernie Idanan, Nanly del Barrio, Marlon Plopenio, Roberto Vargas and Elmer Tulod to suffer the imprisonment ranging from ten (10) years and one (1) day of prision mayor, as minimum, to sixteen (16) years, five (5) months and eleven (11) days of *reclusion temporal*, as maximum. The 29 pieces of narra lumber subject of this case are forfeited in favor of the government.^[10]

The trial court relied on the presumption of regularity in the performance of official duty in giving credence to the testimonies of the police officers. Moreover, there was no evidence manifesting ill motive on the part of the police officers to falsely testify against the accused. The trial court held that possession of 29 pieces of narra lumber with gross volume of 1.69 cubic meters and estimated value of P275,844.80 without any documentation clearly constitutes an offense punishable under PD 705, as amended.

Tulod and Vargas are at large.^[11]

On 29 March 2010, the Court of Appeals rendered its decision affirming petitioner's

conviction.

Petitioners maintain that the prosecution failed to prove beyond reasonable doubt all the elements of the offense charged. Relying on an illegal possession of firearm case where the Court held that to support a conviction, there must be possession coupled with intent to possess, petitioners assert that their intent to possess the subject narra lumber must be proven beyond reasonable doubt. In the case of Tulod and Vargas, they claim that they were merely hired to load the lumber on the truck. On the part of Idanan, he admitted that the truck was owned by his father. Thus, their possession over the lumber is considered temporary, incidental, casual and harmless. Del Barrio and Plopenio meanwhile were merely present at the crime scene. Petitioners note the testimony of the Chief of Police is far from being candid and straightforward when he had to be coached by the prosecutor on matters relative to the arrest of the accused. Petitioners accuse the police officers of planting evidence against them because since the assumption of the Chief of Police to his post, he had never apprehended anybody for illegal possession of lumber. Petitioners assert that their testimonies are candid and spontaneous. They even cite the testimonies of the *barangay* officials as corroborative of their defense that the truck confiscated by the police officers had no narra lumber on it.

In their Comment,^[12] the Office of the Solicitor General (OSG) noted that petitioners were apprehended by the police offices *in flagrante delicto* as they were transporting 29 pieces of narra lumber along Kilometer 12 in Barangay San Miguel, Panganiban, Catanduanes without the required documentation. The OSG added that mere possession of timber or other forest products without the accompanying legal documents consummates the crime. Finally, the OSG defended the credibility of the prosecution witnesses and assailed the defense of frame-up as weak.

At the outset, we find the testimonies of the prosecution witnesses credible. Evidence to be believed must not only proceed from the mouth of a credible witness but it must be credible in itself, such as the common experience and observation of mankind can approve as probable under the circumstances.^[13] Petitioners' statements that they did not complain or put up any resistance when they were arrested despite their innocence is contrary to human nature and experience. Petitioners should have at least protested if they believed that they were not committing any crime. Moreover, the allegation of "planted evidence" is unsubstantiated. There is no proof that the police had the ill-motive to falsely accuse and testify against petitioners, aside from the unsubstantiated and far-fetched allegation that the police wanted to impress their superiors. The presumption of regularity accorded to police officers is un rebutted.

Section 68^[14] of PD 705, otherwise known as the Revised Forestry Code of the Philippines, provides:

Sect. 68. *Cutting, gathering and/or collecting timber or other products without license.* Any person who shall cut, gather, collect, or remove timber or other forest products from any forest land, or timber from alienable and disposable public lands, or from private lands, without any authority under a license agreement, lease, license or permit, shall be guilty of qualified theft as defined and punished under Articles 309 and

310 of the Revised Penal Code; Provided, That in the case of partnership, association or corporation, the officers who ordered the cutting, gathering or collecting shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation.

The Court shall further order the confiscation in favor of the government of the timber or forest products to cut, gathered, collected or removed, and the machinery, equipment, implements and tools used therein, and the forfeiture of his improvements in the area.

The same penalty plus cancellation of his license agreement, lease, license or permit and perpetual disqualification from acquiring any such privilege shall be imposed upon any licensee, lessee, or permittee who cuts timber from the licensed or leased area of another, without prejudice to whatever civil action the latter may bring against the offender.

Section 68 penalizes three categories of acts: (1) the cutting, gathering, collecting, or removing of timber or other forest products from any forest land without any authority; (2) the cutting, gathering, collecting, or removing of timber from alienable or disposable public land, or from private land without any authority; and (3) the possession of timber or other forest products without the legal documents as required under existing forest laws and regulations.^[15]

Petitioners were charged under the third category, *i.e.*, of possessing and in control of 29 pieces of narra lumber without the legal requirements as required under existing forest laws and regulations.

Illegal possession of timber is an offense covered by special law and is *malum prohibitum*. Thus, criminal intent is not an essential element of the offense. However, the prosecution must prove intent to possess or *animus possidendi*.^[16]

Possession, under the law, includes not only actual possession, but also constructive possession. Actual possession exists when the object of the crime is in the immediate physical control of the accused. On the other hand, constructive possession exists when the object of the crime is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found.^[17]

Thus, conviction need not be predicated upon exclusive possession, and a showing of non-exclusive possession would not exonerate the accused. Such fact of possession may be proved by direct or circumstantial evidence and any reasonable inference drawn therefrom.^[18]

We find that Idanan, Del Barrio, and Plopenio were, at the very least, in constructive possession of the timber without the requisite legal documents. Petitioners were found in the truck loaded with 29 pieces of narra lumber. Idanan admitted to driving the truck while Del Barrio and Plopenio accompanied Idanan. They claimed to have traveled for almost three hours just to retrieve the cellular phone of Idanan's father from a certain Jojo Cabrera (Cabrera) in *Barangay* Poblacion, Panganiban,