

FIRST DIVISION

[G.R. No. 167510, July 08, 2015]

ALVIN MERCADO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

D E C I S I O N

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*,^[1] 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.^[2]

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:

- 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.^[3]

Only the petitioner was arraigned because Seña remained at large. The petitioner pleaded *not guilty* to the information.^[4] 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;^[5] 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;^[6] that the shipment was consigned to Al-Mer Cargo Management, an entity owned and managed by the petitioner;^[7] 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 of the shipment by the assigned customs examiner;^[8] 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;*"^[9] 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;^[10] and that, accordingly, the shipment was placed under Seizure Identification No. 00-092 MICP.^[11]

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 2nd Indorsement dated February 23, 2001, then Customs Commissioner Titus B. Villanueva approved the offer of settlement amounting to P85,000.00 and the release of the shipment with the exception of the infringing Levi's jeans and assorted bags;^[12] 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*;^[13] and that through his resolution dated September 27, 2001,^[14] 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;^[15] that Seña had represented to him that the shipment contained only personal and household effects;^[16] 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;^[17] and that the broker prepared the import entry declaration.^[18]

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

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 Seña 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.^[19]

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.
[20]

On March 18, 2005, however, the CA affirmed the RTC,^[21] 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 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 *prison correctional*, as minimum to **FOUR (4) YEARS** and **TWO (2) MONTHS** of *prison correctional*, as maximum and to pay the costs.

SO ORDERED.^[22]

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.^[23]

The petitioner argues that it was not him, but Rolando Saganay, a licensed customs broker from Consular Cargo Services, who had made and signed the IIDE;^[24] that he did not participate in following up the clearance of the shipment;^[25] that the entry of the cargo was not made through a false or fraudulent invoice, declaration, letter or paper;^[26] that the import declaration was made in accordance with the shipping documents that were entirely prepared by the supplier from the country of export;^[27] that he relied in good faith on the entries prepared by Saganay, which he presumed to be true and correct;^[28] 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.^[29]

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