

SECOND DIVISION

[G.R. NO. 144640, June 26, 2006]

**RODOLFO TIGOY, PETITIONER, VS. COURT OF APPEALS AND
PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

DECISION

AZCUNA, J.:

This is a petition for review under Rule 45 of the Rules of Court assailing the decision and resolution, dated March 6, 2000 and August 23, 2000, respectively, of the Court of Appeals in CA-G.R. CR No. 20864 entitled "People of the Philippines v. Nestor Ong and Rodolfo Tigoy," acquitting Nestor Ong for insufficiency of evidence, while convicting Rodolfo Tigoy for violating Section 68 of Presidential Decree (P.D.) No. 705 or the Revised Forestry Code of the Philippines, as amended by Executive Order (E.O.) No. 277, Series of 1987, in relation to Articles 309 and 310 of the Revised Penal Code.

The facts of the case are as follows:

On August 3, 1993, Nestor Ong, who had been engaged in the trucking business in Iligan City since 1986, was allegedly introduced by his friend Gamad Muntod to Lolong Bertodazo who signified his intent to rent the trucks of Ong to transport construction materials from Larapan, Lanao del Norte to Dipolog City. A Contract to Transport was supposedly entered into between Ong and Bertodazo, the salient portions of which state:

1. That the party of the First Part is an owner of Cargo Trucks with place of business at Iligan City;
2. That the party of the Second Part is a businessman dealing in buy and sell of General Merchandise, dry goods and construction materials;
3. That the party of the Second Part will engage the services of the two (2) cargo trucks of the party of the First Part;
4. That the services agreed upon should be rendered by the party of the First Part on August 3, 1993 from Larapan, Linamon, Lanao del Norte to Dipolog City for an agreed amount of TEN THOUSAND (P10,000.00) Pesos per truck or a total of TWENTY THOUSAND (P20,000.00) Pesos, Philippine Currency for the carriage of cement and other merchandise owned by the party of the Second Part;
5. That any legal controversy involving the cargo or of and when the cargo trucks are not actually used for the purpose herein stipulated,

it is agreed that the same is the sole responsibility of the party of the Second Part without any liability of the party of the First Part.^[1]

In the evening of October 3, 1993, Ong allegedly ordered Nestor Sumagang and petitioner Rodolfo Tigoy who had been employed by him as truck drivers for two (2) years and ten (10) years, respectively, to bring the two trucks to Lolong Bertodazo in Larapan, Lanao del Norte which is about fifteen (15) minutes away from Iligan City. He instructed the two drivers to leave the trucks in Larapan for the loading of the construction materials by Lolong Bertodazo, and to go back at dawn for the trip to Dipolog City. Thus, after meeting with Bertodazo, Sumagang and petitioner Tigoy allegedly went home to return to Larapan at four o'clock in the morning the next day. When they arrived, the trucks had been laden with bags of cement and were half-covered with canvas.^[2] Before departing, they allegedly checked the motor oil, water, engine and tires of the trucks to determine if the same were in good condition.

That same morning of October 4, 1993, Senior Inspector Rico Lacay Tome (then Deputy Chief of Police of Ozamis City), while escorting Provincial Director Dionisio Coloma at the ICC Arts Center in Ozamis City, along with the members of the Special Operation Group, received a dispatch from the 466th PNP Company situated at Barangay Bongbong, Ozamis City, informing him that two trucks, a blue and green loaded with cement, that were going towards Ozamis City did not stop at the checkpoint. Upon receiving the report, Tome, along with PO2 Peter Paul Nuqui and PO3 Bienvenido Real, boarded their patrol vehicle, a mini cruiser jeep, to intercept the two trucks at Lilian Terminal, Ozamis City.^[3]

At the Lilian Terminal, PO2 Nuqui, who was the only one in uniform among the police officers, flagged down the two trucks but the same just sped away and proceeded towards the direction of Oroquieta City. Aboard their patrol vehicle, they chased the trucks and overtook the same at Barangay Manabay. They blocked the road with their vehicle causing the two trucks to stop.

According to Senior Inspector Tome, he asked the driver who had alighted from the green truck why he did not stop at the checkpoint but the latter did not answer. When he inquired what was loaded in the truck, the driver replied that there is "S.O.P," which means grease money in street parlance.^[4] This raised the suspicion of Tome that the trucks were loaded with "hot items."

Meanwhile, the blue truck which had been speeding behind the green truck and was being driven by Sumagang was intercepted by PO3 Real. Upon inspection, the police officers discovered piles of sawn lumber beneath the cement bags in both trucks.

Tome inquired if the drivers had a permit for the lumber but the latter could not produce any.

The drivers were brought and turned over to the investigator at the City Hall in Ozamis City. The truckmen, namely, Felix Arante and Doro Lopez, and another passenger whom Tigoy identified as Lolong Bertodazo, who were riding with them in the trucks, were not investigated. According to Nuqui, they did not notice that the group had left. It was later learned that they were instructed by Sumagang to inform Nestor Ong of the incident.

Afterwards, the group of Tome proceeded back to the ICC Arts Center and informed the Provincial Director of the apprehension. Meanwhile, the drivers, Tigoy and Sumagang, were detained at the Ozamis City Police Station while Arante and Lopez were released.^[5]

Meanwhile, Ermelo delos Santos, Chief of the Department of Environment and Natural Resources – Community and Environment and Natural Resources Office (DENR-CENRO),^[6] after receiving a call from the Ozamis City Police Station that two trucks were apprehended transporting sawn lumber without a permit and were brought to the City Hall, sent Rolando Dingal, Forester of the DENR, together with Teodoro Echavez, Juanito Taruc and Lucio Penaroya, to investigate.

Petitioner Tigoy and Sumagang presented to Dingal the registration papers of the two trucks and appearing therein was the name of Nestor Ong as the owner. After ascertaining that the sawn lumber loaded on the two trucks did not have supporting documents, Dingal and his companions scaled the subject lumber and prepared a tally sheet. Loaded in the blue Nissan ten-wheeler truck were 229 pieces of lumber with a total volume of 6,232.46 board feet; and, in the green Isuzu eight-wheeler truck, 333 pieces of lumber with a total volume of 5,095.5 board feet.^[7] Consequently, the lumber and the vehicles were seized upon the order of the DENR Regional Executive Director.^[8]

On October 6, 1993, an Information was filed against Nestor Ong, Sumagang, Lolong Bertodazo and petitioner Tigoy for possession of forest products without legal permit, thus:

That on or about the 4th day of August, 1993 at Barangay Catadman, Ozamiz City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping each other, for a common design, did then and there willfully, unlawfully, feloniously and illegally possess and transport without the necessary legal documents nor permit from the lawful authorities, sawn dipterocarp lumbers (Philippine Mahogany), in the following manner, to wit: accused Nestor Ong, being the owner of 2 ten wheeler trucks with Plate Nos. GDA-279 and PNH-364 facilitated and allowed the use and transport of above-stated sawn [lumber] from Larapan, Lanao del Norte, but intercepted by the PNP authorities in Ozamiz City; while the accused Lolong Bertodazo facilitated the loading and transport of said sawn lumbers, while accused Nestor Sumagang y Lacson drove the Nissan 10 wheeler cargo truck bearing Plate No. GDA-279 which was loaded with 333 pieces of said sawn dipterocarp lumbers (Philippine Mahogany) of assorted sizes equivalent [to] 5,095.5 board feet which was concealed under piled bags of cement, which lumbers [were] valued at P134, 242.36; while accused Rodolfo Tigoy drove the 8 wheeler Isuzu truck bearing Plate No. ONH-364, which was loaded and transported with 229 pieces of sawn dipterocarp lumbers (Philippine Mahogany) of assorted sizes equivalent to 6,232.46 board feet which was concealed under piled bags of cement which lumbers [were] valued at P92,316.77 or total value of P226,559.13, without, however, causing damage to the government, inasmuch as the aforestated lumbers were recovered.

CONTRARY to Section 68 of Presidential Decree 705, as amended by Executive Order No. 277, Series of 1987, in relation to Article 309 and 310 of the Revised Penal Code.^[9]

Ong and petitioner Tigoy entered pleas of not guilty during the arraignment. Sumagang died after the case was filed while the other co-accused, Lolong Bertodazo, was not arrested and has remained at large.

On October 11, 1996, the Regional Trial Court rendered its Decision, the dispositive portion of which reads:

WHEREFORE, finding accused Nestor Ong and Rodolfo Tigoy [GUILTY] beyond reasonable doubt of possession of dipterocarp lumber [VALUED] at more than P22,000.00 without the legal documents as required by existing laws and regulations, penalized as qualified theft, this Court sentences them to an indeterminate penalty of ten (10) years and one (1) day of prision mayor to eighteen (18) years and three (3) months of reclusion temporal. The lumber and the conveyances used are forfeited in favor of the government. With costs.

The DENR is ordered to sell/dispose of the lumber and conveyances in accordance with the existing laws, WITHOUT DELAY. Let the Court of Appeals, Fourteenth Division, before which accused Ong's appeal of this Court's denial of his action for replevin relative to his trucks is pending, be furnished with a copy of this judgment.

With costs.

SO ORDERED.^[10]

Declaring that "constructive possession" of unlicensed lumber is not within the contemplation of Section 68 of P.D. No. 705, and for failure by the prosecution to prove the complicity of Ong, the Court of Appeals rendered its decision on March 6, 2000 modifying the ruling of the lower court, thus:

WHEREFORE, the judgment appealed from is hereby MODIFIED in that accused-appellant Nestor Ong is acquitted for insufficiency of evidence and his two (2) trucks are ordered returned to him. The conviction of Rodolfo Tigoy is upheld and the decision dated October 11, 1996 is AFFIRMED in all respects.

SO ORDERED.^[11]

On March 24, 2000, petitioner filed with the Court of Appeals a Motion for Reconsideration praying for his acquittal but the same was denied on August 23, 2000. Hence, this petition, with the following assignment of errors:

I

THE COURT OF APPEALS ERRED IN FINDING "COLLUSION" BETWEEN LOLONG BERTODAZO AND PETITIONER TIGOY;