

FIRST DIVISION

[G.R. No. 115507, May 19, 1998]

**ALEJANDRO TAN, ISMAEL RAMILO AND FRED MORENO,
PETITIONERS, VS. THE PEOPLE OF THE PHILIPPINES AND THE
COURT OF APPEALS, RESPONDENTS.**

DECISION

PANGANIBAN, J.:

In denying this petition, the Court reiterates that the gathering, collection and/or possession, without license, of *lumber*, which is considered *timber* or *forest product*, are prohibited and penalized under the Forestry Reform Code, as amended.

The Case

In this petition for review on certiorari under Rule 45 of the Rules of Court, petitioners seek to set aside the Decision^[1] of the Court of Appeals^[2] in CA-GR No. CR-12815 promulgated on July 30, 1993, and its Resolution^[3] promulgated on April 28, 1994. The assailed Decision affirmed the judgment^[4] of the Regional Trial Court of Romblon, Branch 81,^[5] which, in the complaint against petitioners for violation of Section 68, PD 705 (Forestry Reform Code) as amended, disposed as follows:

"WHEREFORE, this Court finds:

- a) the accused ALEJANDRO TAN, ISMAEL RAMILO and FRED MORENO GUILTY beyond reasonable doubt of the crime of illegal possession of *lumber* under the Information, dated March 16, 1990, under Section 68, P.D. No. 705, as amended by Executive Order No. 277, and sentences each of them to an indeterminate sentence of SIX (6) MONTHS, as minimum, to FOUR (4) YEARS and TWO (2) MONTHS, as maximum, with the accessory penalties of the law, and to pay the costs, and
- b) the accused ALEJANDRO TAN, ISMAEL RAMILO and CRISPIN CABUDOL GUILTY beyond reasonable doubt of the crime of illegal possession of *lumber* under the Information, dated March 16, 1990, under Section 68, P.D. No. 705, as amended by Executive Order No. 277, and sentences each of them to an indeterminate sentence of SIX (6) MONTHS, as minimum, to FOUR (4) YEARS and TWO (2) MONTHS, as maximum, with the accessory penalties of the law, and to pay the costs.

The two (2) terms of imprisonment of each of the accused shall be served successively under Article 70, RPC.

The preventive imprisonment which any of the accused may have suffered is credited in his favor to its full extent.

The Court further orders the confiscation of the *lumber* described in the aforesaid Informations in favor of the government.

SO ORDERED.”

The Facts

On October 26, 1989, about 6:30 p.m., in the town proper of Cajidiocan, Sibuyan Island, Romblon, Forest Guards Joseph Panadero and Eduardo Rabino intercepted a dump truck loaded with narra and white *lauan lumber*. The truck was driven by Petitioner Fred Moreno, an employee of A & E Construction. Again, about 8:00 p.m. on October 30, 1989, this time in Barangay Cambajao, Forest Guards Panadero and Rabino apprehended another dump truck with Plate No. DEK-646 loaded with *tanguile lumber*. Said truck was driven by Crispin Cabudol, also an employee of A & E Construction. Both motor vehicles, as well as the construction firm, were owned by Petitioner Alejandro Tan. In both instances, no documents showing legal possession of the *lumber* were, upon demand, presented to the forest guards; thus, the pieces of *lumber* were confiscated.

On March 16, 1990, Tan and Moreno, together with Ismael Ramilo, caretaker and timekeeper of A & E Construction, were charged by First Assistant Provincial Prosecutor Felix R. Rocero with violation of Section 68,^[6] PD No. 705, as amended by EO No. 277, in an Information^[7] which reads:

“That on or about the 26th day of October, 1989, at around 6:30 o’clock in the evening, in the Poblacion, municipality of Cajidiocan, province of Romblon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring, confederating and mutually helping one another, with intent of gain and without the legal documents as required under existing forest laws and regulations, did then and there willfully, unlawfully and feloniously have in their possession and under their custody and control 13 pieces narra lumber about 171 board feet and 41 pieces *tanguile* lumber about 834 board feet valued at P8,724.00, Philippine currency, to the damage and prejudice of the government in the aforestated amount.”

In another Information,^[8] Tan and Ramilo, together with Crispin Cabudol, were also charged for the same violation in connection with the October 30, 1989 incident.

On April 26, 1990, all the accused, assisted by counsel, were arraigned on the basis of the aforementioned Informations; each pleaded not guilty.^[9] The cases were thence jointly tried, pursuant to Section 14, Rule 119 of the Rules of Court.^[10]

During the trial, the defense did not contest the above factual circumstances except to deny that the forest guards demanded, on either of the two occasions, papers or documents showing legal possession of the *lumber*. Additionally, Prisco Marin, who claimed to have been the officer-in-charge (OIC) of the Bureau of Forest Development of Sibuyan, testified that the seized pieces of *lumber* were bought by Tan’s Cajidiocan Trading, one of the licensed *lumber* dealers in the island, from Matzhou Development Corporation (“Matzhou”) which thus delivered to the former Auxiliary Invoice No. 763850^[11] dated March 19, 1987 issued by the Bureau of Internal Revenue office in Romblon. According to Marin, the director of forestry had

granted Matzhou a Tree Recovery Permit covering the entire island of Sibuyan. He added that he had inspected the *lumber* in question in the compound of A & E Construction or Cajidiocan Trading, where he was shown the auxiliary invoice covering the subject.^[12]

Ruling of the Trial Court

The trial court brushed aside the version of the defense and ruled that the confiscated pieces of *lumber* which were admittedly owned by Accused Tan were not legitimate deliveries but aborted nocturnal haulings. It convicted all the accused as charged for their failure to comply with the Forestry Reform Code, which requires the following legal documents: (1) an auxiliary invoice, (2) a certificate of origin, (3) a sales invoice, (4) scale/tally sheets and (5) a *lumber* dealer permit.

Ruling of Respondent Court of Appeals

On appeal, the accused assigned to the trial court these ten errors: (1) holding them liable under Section 68 of EO 277; (2) ruling that their possession of the *lumber* were unauthorized or illegal; (3) retroactively applying E.O. 277; (4) ruling that the accused did not have the necessary documents to make their possession legal; (5) convicting them despite the absence of the *corpus delicti*; (6) admitting in evidence the alleged seizure receipts or, assuming their admissibility, considering them as evidence of *corpus delicti*; (7) finding that the deliveries were aborted nocturnal haulings; (8) convicting Alejandro Tan on the ground of conspiracy; (9) ruling that the guilt of the accused was proved beyond reasonable doubt; and (10) sustaining the constitutionality of EO 277.^[13]

As regards the first assigned error, the Court of Appeals held petitioners' "artful distinction between timber and lumber" "to be fallacious and utterly unmeritorious." It thereby upheld the solicitor general's manifestation that "forest products" include "wood" which is defined by Webster's Dictionary as "the hard fibrous substance beneath the bark of trees and shrubs." Respondent Court succinctly ruled that to construe "sawn lumber" as not covered by "sawn timber" would defeat the evident intent and purpose of the law, for "what would prevent an illegal logger [from bringing] with him a portable saw and having the *timber* illegally cut/gathered [and] sawn right on the spot, thus gaining immunity for himself[?]"^[14]

As to the next three assigned errors which relied heavily on Prisco Marin's testimony, Respondent Court dismissed the said witness' account as "anything but credible." It added that Marin's testimony largely focused on a certification he made stating that, five years ago, he inspected the same confiscated *lumber* which were to be used for the repair of school buildings by A & E Construction in Sibuyan. But during the cross-examination, he admitted that he made the inspection in December 1989. The appellate tribunal noted that, by then, he had already been relieved of his position as OIC of the Bureau of Forest Development in Romblon; hence, he had no business inspecting the lumberyard of Petitioner Tan. In fact, he admitted that in December 1989, it was Romulae Gadaoni who was already the highest forest officer in the island.^[15]

As to the fifth and sixth alleged errors, Respondent Court ruled that *corpus delicti* does not refer literally to the object of the crime -- in this case, the forest products possessed without the required legal documents. The fact that the crimes charged were perpetrated by the petitioners was credibly and amply proven by the detailed

testimonies of the prosecution witnesses, including the admission of Defense Witness Ismael Ramilo. The seizure receipts merely served to corroborate their testimonies.^[16]

The seventh and ninth assigned errors were deemed answered in the foregoing discussions. As to the eighth, no other than the admission of his caretaker or *katiwala*, Co-Accused Ramilo, proved that Tan was involved in the conspiracy. Ramilo testified that the deliveries of *lumber* on the subject dates (October 26 and 30, 1989) were made pursuant to the instruction of Tan; and that the latter owned said *lumber*, the trucks and the construction firm. The two accused truck drivers who were caught in flagrante delicto were mere employees of Tan.^[17]

The last assigned error was set aside by Respondent Court as unnecessary. Absolutely of no concern to the petitioners, who were caught in possession of *lumber* without the required legal documents, was the alleged unconstitutionality of the inclusion of "firewood, bark, honey, beeswax, and even grass, shrub, 'the associated water' or fish" in EO 277. There being other grounds to resolve the case, the constitutionality of said phrase was not passed upon.^[18]

In their motion for reconsideration, petitioners raised these additional grounds: (1) the Forestry Reform Code and the laws and regulations of the Department of Environment and Natural Resources (DENR) distinguish between *timber* and *lumber* and between *lumber* and other *forest products*; (2) the Informations alleged and the facts proved that *lumber* is not covered by the provision supposedly violated; (3) judicial interpretation or construction may not be resorted to in order to fill a gap or clear an ambiguity in penal statutes and, assuming the propriety thereof, construction should be in favor of the accused; (4) lack of documents for possession of *lumber* is not punishable under the law; and (5) the perceived weakness in the testimony of Defense Witness Prisco Marin should not strengthen the case for the prosecution. In its April 28, 1994 Resolution, Respondent Court found "no cogent reason for the reversal or modification" of its Decision. Hence, this petition.^[19]

The Issues

Petitioners now ask this Court to likewise pass upon their foregoing submissions. Many of the errors raised, however, involve factual questions, the review of which is not within the ambit of this Court's functions, particularly in this case where the findings of the trial court were affirmed by the appellate court and where petitioners failed to show any misappreciation of the evidence presented.^[20] We shall therefore limit our review only to questions of law.

Accordingly, we shall rule on the following legal issues: (1) the constitutionality of Section 68 of EO 277, (2) the treatment by the lower courts of *lumber* as *timber* and/or *forest product* within the contemplation of PD 705, as amended, and (3) the alleged retroactive application of EO 277.

The Court's Ruling

The petition is not meritorious.

Preliminary Issue:

Constitutionality of Sec. 68, E.O. 277

The impugned legal provision reads: