

## SECOND DIVISION

[ G.R. No. 136142, October 24, 2000 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ALFONSO DATOR AND BENITO GENOL, ACCUSED (ACQUITTED)  
PASTOR TELEN, ACCUSED-APPELLANT. D E C I S I O N**

**DE LEON, JR., J.:**

Before us on appeal is the Decision<sup>[1]</sup> of the Regional Trial Court of Maasin, Southern Leyte, Branch 25, in Criminal Case No. 1733 convicting the appellant of the crime of violation of Presidential Decree No. 705.

Pastor Telen and his co-accused, Alfonso Dator and Benito Genol, were charged with the crime of violation of Section 68<sup>[2]</sup> of Presidential Decree No. 705, otherwise known as the Revised Forestry Code,<sup>[3]</sup> in an Information that reads:

That on or about the 29th day of October, 1993 at around 8:00 o'clock in the evening, in barangay Laboon, municipality of Maasin, province of Southern Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping each other, with intent of gain, did then and there wilfully, unlawfully and feloniously possess 1,560.16 board feet of assorted lumber flitches valued at TWENTY-THREE THOUSAND FIVE HUNDRED PESOS (23,500.00), Philippine Currency, without any legal document as required under existing forest laws and regulations from proper government authorities, to the damage and prejudice of the government.

CONTRARY TO LAW.

Upon being arraigned on May 27, 1994, Pastor Telen and his co-accused, Alfonso Dator and Benito Genol, assisted by counsel, separately entered the plea of "Not guilty" to the charge in the Information. Thereafter, trial on the merits ensued.

It appears that on October 29, 1993, Police Station Commander Alejandro Rojas of Maasin, Southern Leyte, and SPO1 Necitas Bacala, were on board a police patrol vehicle heading towards Barangay San Rafael, Maasin, Southern Leyte. Upon reaching Barangay Laboon of the same municipality, they noticed a Isuzu cargo truck loaded with pieces of lumber bound toward the town proper of Maasin. Suspicious that the cargo was illegally cut pieces of lumber, Police Station Commander Rojas maneuvered their police vehicle and gave chase.<sup>[4]</sup>

Upon catching up with the Isuzu cargo truck in Barangay Soro-soro, Maasin, Southern Leyte, they ordered the driver, accused Benito Genol, to pull over. Benito Genol was left alone in the truck after his companions hurriedly left. When asked if he had the required documents for the proper transport of the pieces of lumber, Genol answered in the negative. Genol informed the police authorities that the pieces of lumber were owned by herein appellant, Pastor Telen, while the Isuzu

cargo truck bearing Plate No. HAF 628 was registered in the name of Southern Leyte Farmers Agro-Industrial Cooperative, Inc. (SLEFAICO) which is a local cooperative. Consequently, Police Officers Rojas and Bacala directed Benito Genol to proceed to the Maasin Police Station, Maasin, Southern Leyte for further investigation.<sup>[5]</sup>

On November 5, 1993, Forest Ranger Romeo Galola was fetched from his office at the Community Environment and Natural Resources Office (CENRO), Maasin, Southern Leyte by SPO1 Necitas Bacala to inspect the pieces of lumber that were confiscated on October 29, 1993 in Soro-soro, Maasin, Southern Leyte from Pastor Telen. Galola and his immediate supervisor, Sulpicio Saguing, found that the cargo consisted of forty-one (41) pieces of Dita lumber and ten (10) pieces of Antipolo lumber of different dimensions with a total volume of 1,560.16 board feet.<sup>[6]</sup>

Subsequently, SPO1 Bacala issued a seizure receipt<sup>[7]</sup> covering the fifty-one (51) pieces of confiscated Dita and Antipolo lumber and one (1) unit of Isuzu cargo truck with Plate No. HAF 628. The confiscated pieces of lumber and the cargo truck were turned over to SPO3 Daniel Lasala, PNP Property Custodian, Maasin, Southern Leyte who, in turn, officially transferred custody of the same to the CENRO, Maasin, Southern Leyte.<sup>[8]</sup>

The defense denied any liability for the crime charged in the Information. Pastor Telen, a utility worker at the Integrated Provincial Health Office, Southern Leyte for nineteen (19) years, testified that he needed lumber to be used in renovating the house of his grandparents in Barangay Abgao, Maasin, Southern Leyte where he maintained residence. Knowing that it was prohibited by law to cut trees without appropriate permit from the Department of Environment and Natural Resources (DENR), Telen sought the assistance of a certain Lando dela Pena who was an employee at the CENRO, Maasin, Southern Leyte. Dela Pena accompanied Telen to the office of a certain Boy Leonor, who was the Officer in Charge of CENRO in Maasin, Southern Leyte. Leonor did not approve of the plan of Telen to cut teak or hard lumber from his (Telen) mother's track of land in Tabunan, San Jose, Maasin, Southern Leyte. However, Leonor allegedly allowed Telen to cut the aging Dita trees only. According to Telen, Leonor assured him that a written permit was not anymore necessary before he could cut the Dita trees, which are considered soft lumber, from the private land of his mother, provided the same would be used exclusively for the renovation of his house and that he shall plant trees as replacement thereof, which he did by planting Gemelina seedlings.<sup>[9]</sup>

On September 15, 1993, Telen requested his cousin, Vicente Sabalo, to hire for him a cargo truck in order to haul the sawn lumber from the land of his mother in Tabunan, San Jose, Maasin, Southern Leyte. His cousin obliged after Telen assured him that he had already secured verbal permission from Boy Leonor, Officer in Charge of CENRO in Maasin, Southern Leyte, before cutting the said lumber.<sup>[10]</sup>

After having been informed by Vicente Sabalo on October 29, 1993 at about 4:00 o'clock in the afternoon that a cargo truck was available for hire, Telen instructed his cousin to personally supervise the hauling of the sawn lumber for him inasmuch as he was busy with his work in the office. At around 7:00 o'clock in the evening, Telen learned from his daughter that the sawn lumber were confiscated by the police in Barangay Soro-soro, Maasin, Southern Leyte.<sup>[11]</sup>

Upon arrival in Barangay Soro-Soro, Telen was accosted by Police Station Commander Alejandro Rojas who demanded from him DENR permit for the sawn lumber. After confirming ownership of the sawn lumber, Telen explained to Rojas that he had already secured verbal permission from Boy Leonor to cut Dita trees, which are considered soft lumber, to be used in the renovation of his house and that he had already replaced the sawn Dita trees with Gemelina seedlings, but to no avail. Rojas ordered that the pieces of lumber and the Isuzu cargo truck be impounded at the municipal building of Maasin, Southern Leyte for failure of Telen to produce the required permit from the DENR.<sup>[12]</sup>

Pastor Telen appeared before Bert Pesidas, CENRO hearing officer, in Maasin, Southern Leyte for investigation in connection with the confiscated pieces of lumber. Telen had tried to contact Officer-in-Charge Boy Leonor of the CENRO Maasin, Southern Leyte after the confiscation of the sawn lumber on October 29, 1993 and even during the investigation conducted by the CENRO hearing officer for three (3) times but to no avail, for the reason that Boy Leonor was assigned at a reforestation site in Danao, Cebu province.<sup>[13]</sup>

Alfonso Dator, was the accounting manager of SLEFAICO, Inc., a local cooperative engaged in buying and selling abaca fibers. Dator testified that on October 29, 1993 at 3:00 o'clock in the afternoon, a certain Vicente Sabalo, accompanied by their company driver, Benito Genol, proposed to hire the Isuzu cargo truck owned by SLEFAICO, Inc. to haul pieces of coconut lumber from Barangay San Jose to Barangay Soro-soro in Maasin, Southern Leyte. He readily acceded to the proposal inasmuch as the owner of the alleged coconut lumber, according to Sabalo, was Pastor Telen, who is a long time friend and former officemate at the provincial office of the Department of Health. Besides, the fee to be earned from the hauling services meant additional income for the cooperative.<sup>[14]</sup>

At about 6:00 o'clock in the evening of the same day, Dator met the Isuzu cargo truck of SLEFAICO, Inc. at the Canturing bridge in Maasin, Southern Leyte, being escorted by a police patrol vehicle, heading towards the municipal town proper. At the municipal hall building of Maasin, he learned that the Isuzu truck was apprehended by the police for the reason that it contained a cargo of Dita and Antipolo lumber without the required permit from the DENR. He explained to the police authorities that the Isuzu cargo truck was hired merely to transport coconut lumber, however, it was impounded at the municipal building just the same.<sup>[15]</sup> Due to the incident Dator lost his job as accounting manager in SLEFAICO, Inc.<sup>[16]</sup>

For his defense, Benito Genol testified that he was employed by the SLEFAICO, Inc. as driver of its Isuzu cargo truck. Aside from transporting abaca fibers, the Isuzu cargo truck was also available for hire.<sup>[17]</sup>

While Genol was having the two tires of the Isuzu cargo truck vulcanized on October 29, 1993 in Barangay Mantahan, Maasin, Southern Leyte, Vicente Sabalo approached him and offered to hire the services of the cargo truck. Genol accompanied Sabalo to the residence of the accounting manager of SLEFAICO, Inc., Alfonso Dator, which was nearby, and the latter agreed to the proposal of Sabalo to hire the Isuzu cargo truck to haul pieces of coconut lumber from San Jose, Maasin, Southern Leyte, for a fee.<sup>[18]</sup>

At 4:00 o'clock in the afternoon of the same day, Genol, Sabalo and a son of Alfonso Dator, proceeded to San Jose after fetching about six (6) haulers along the way in Barangay Soro-soro. Upon arrival in San Jose, Genol remained behind the steering wheel to take a rest. He was unmindful of the actual nature of the lumber that were being loaded. After the loading, Genol was instructed to proceed to Barangay Soro-soro in front of the lumberyard of a certain Jimmy Go. Before the lumber could be unloaded at 8:00 o'clock in the evening Genol was approached by Police Station Commander Alejandro Rojas who demanded DENR permit for the lumber. The pieces of lumber were confiscated by Rojas after Genol failed to produce the required permit from the DENR office.<sup>[19]</sup>

Vicente Sabalo corroborated the testimonies of the three (3) accused in this case. He testified in substance that he was requested by his cousin, Pastor Telen, to engage the services of a cargo truck to transport sawn pieces of lumber from San Jose to be used in the renovation of his house in Abgao, Maasin, Southern Leyte; that he approached Benito Genol and offered to hire the services of the Isuzu cargo truck that he was driving; that both of them asked the permission of Alfonso Dator who readily acceded to the proposal for a fee of P500.00;<sup>[20]</sup> that he saw Genol remained behind the steering wheel as the loading of the lumber was going on in San Jose; and that the lumber and the Isuzu cargo truck were confiscated in Barangay Soro-soro for failure of his cousin, Pastor Telen, to show to Police Station Commander Alejandro Rojas any written permit from the DENR for the subject lumber.<sup>[21]</sup>

After analyzing the evidence, the trial court rendered a decision, the dispositive portion of which reads:

WHEREFORE, judgment is rendered as follows:

1. CONVICTING the accused PASTOR TELEN beyond reasonable doubt of the offense charged and there being no modifying circumstances, and with the Indeterminate Sentence Law being inapplicable, the herein accused is hereby sentenced to suffer the indivisible penalty of RECLUSION PERPETUA, with the accessory penalties provided by law, which is two (2) degrees higher than PRISION MAYOR maximum, the authorized penalty similar to Qualified Theft, and to pay the costs. His bail for his provisional liberty is hereby cancelled and he shall be committed to the New Bilibid Prisons, Muntinlupa, Metro Manila thru the Abuyog Regional Prisons, Abuyog, Leyte via the Provincial Warden, Maasin, Southern Leyte;
2. ACQUITTING co-accused Alfonso Dator and Benito Genol on reasonable doubt for insufficiency of evidence; and cancelling their bail;
3. CONFISCATING and SEIZING the 1,560.16 board feet of illegal lumber worth P23,500.00 and ORDERING the CENRO Maasin, Southern Leyte to sell the lumber at public auction under proper permission from the Court, with the proceeds thereof turned over to the National Government thru the National Treasury under proper receipt, and to REPORT the fact of sale to this Court duly covered by documents of sale and other receipts by evidencing the sale

within five (5) days from the consummation of sale; and

4. DIRECTING the CENRO authorities to coordinate with its Regional Office for immediate administrative proceedings and determination of any administrative liability of the truck owner, SLEFAICO Inc. if any, otherwise, to release the truck to its owner.

SO ORDERED.

In his appeal Pastor Telen interpose the following assignments of error:

I

THE LOWER COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT FOR VIOLATION OF SEC. 68, P. D. 705, AS AMENDED, BEING CONTRARY TO LAW AND THE EVIDENCE ON RECORD AND FOR BEING NOT IN CONFORMITY WITH DENR ADMINISTRATIVE ORDER NO. 79, SERIES OF 1990.

II

THE LOWER COURT ERRED IN IMPOSING THE ACCUSED-APPELLANT THE PENALTY OF RECLUSION PERPETUA FOR THE ALLEGED VIOLATION OF SEC. 68, P. D. 705, AS AMENDED, IT BEING A PATENTLY ERRONEOUS PENALTY NOT WARRANTED BY ANY PROVISION OF THE REVISED PENAL CODE OR JURISPRUDENCE.

III

THE LOWER COURT ERRED IN FINDING THAT THE VALUE OF THE CONFISCATED LUMBER IS P23,500.00 FOR NO EVIDENCE OF SUCH VALUE WAS ESTABLISHED DURING THE TRIAL.

The appeal is not impressed with merit.

It is not disputed that appellant Pastor Telen is the owner of the fifty-one (51) pieces of assorted Antipolo and Dita lumber with a total volume of 1,560.16 board feet. He alleged that the pieces of lumber were cut from the track of land belonging to his mother in San Jose, Maasin, Southern Leyte which he intended to use in the renovation of his house in Barangay Abgao of the same municipality. After having been confiscated by the police, while in transit, in Barangay Soro-soro, appellant Telen failed to produce before the authorities the required legal documents from the DENR pertaining to the said pieces of lumber.

The fact of possession by the appellant of the subject fifty-one (51) pieces of assorted Antipolo and Dita lumber, as well as his subsequent failure to produce the legal documents as required under existing forest laws and regulations constitute criminal liability for violation of Presidential Decree No. 705, otherwise known as the Revised Forestry Code.<sup>[22]</sup> Section 68 of the code provides:

*Section 68. Cutting, Gathering and/or Collecting Timber or Other Forest Products Without License.*-Any person who shall cut, gather, collect, remove timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, without any authority, or possess timber or other forest products without the