

FIFTH DIVISION

[CA-G.R. CR NO. 25250, September 22, 2006]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EDUARDO CORTEZ, ACCUSED-APPELLANT.**

DECISION

DIMAAMPAO, J.:

On appeal before Us is the *Decision*¹ dated 18 January 2001 of the Regional Trial Court (RTC), Third Judicial Region, Palayan City, Branch 40, the decretal portion of which reads:

"WHEREFORE, judgment is hereby rendered finding the accused Pablo Ignacio Alday, Serafin Perez and Eduardo Cortez GUILTY beyond reasonable doubt for violation of Section 68 of Presidential Decree No. 705 as amended by Executive Order No. 277, and hereby sentences all of the accused to a prison term of six (6) months to four (4) years and two (2) months.

"The subject lumber is hereby confiscated in favor of the government.

"SO ORDERED."²

In an Information³ dated 25 August 1997, Serafin Perez ("Perez"), Pablo Ignacio Alday ("Alday") and Eduardo Cortez ("Cortez") were charged with the crime of violation of Section 68 of Presidential Decree No. 705, committed as follows:

"That on or about the 6th day of July 1997, in the Municipality of Laur, Province of Nueva Ecija, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping each other, did then and there wilfully, unlawfully and feloniously, have in their possession and control 43 pieces of narra lumber and 106 pieces of ordinary lumber, totalling 1,056.2 board feet, worth P 70,719.00, and transport the same, without the papers and documents required under existing forestry laws and regulations.

"CONTRARY TO LAW."⁴

During the arraignment, Perez, Alday⁵ and Cortez⁶ entered a plea of NOT GUILTY. The counsel of Perez and Alday waived the right of both accused to a pre-trial conference.⁷ With respect to Cortez, the case was set for a pre-trial conference which, however, was terminated later on upon motion of his counsel.⁸

The prosecution presented four (4) witnesses, namely: Francisco Pagbilao, Jr.

("Pagbilao"), Alfredo Lantano ("Lantano"), Orlando Manzano ("Manzano") and Danilo de Guzman.

Their testimonies, as succinctly summarized by the Office of the Solicitor General, are as follows:

"On or about 9:00 o'clock in the morning of July 6, 1997, Forest Ranger Francisco Pagbilao, Jr., a member of the Karagsakan Task Force in Laur, Nueva Ecija and who was then assigned to the Bato Ferry Detachment, Laur, Nueva Ecija received a radio message from Karagsakan Detachment, Karagsakan, Dingalan, Aurora that a Forward Isuzu Truck bearing Plate No. CNS-948 coming from Dingalan was loaded with illegally cut lumber.

Immediately, Forest Ranger Francisco Pagbilao together with Sgt. Alfredo Lantao (*sic*) and PFC Orlando Manzano blocked the road near their detachment and intercepted the Isuzu truck bearing Plate No. CNS-948. The truck was being driven by accused Pablo Alday while accused Serafin Perez sat in the passenger seat. On the other hand, appellant was on board a motorcycle leading the Isuzu truck. Upon scrutiny, the team confirmed the information that the truck was indeed carrying illegally cut lumber. They asked the accused to show them the necessary permits coming from the Department of Environment and Natural resources but the three could not present any.

Thereafter, the Isuzu truck was brought to the detachment headquarters for further investigation. At this juncture, appellant Eduardo Cortez went to the detachment headquarters and told Francisco Pagbilao that he is the owner of several pieces of lumber inside the Isuzu truck and that he will use them in building his house. Serafin Perez who was in the passenger seat stated that he is the owner of the truck and that Eduardo Cortez, a friend of his, borrowed the same upon the assurance that it will not be used for any illegal purpose.

Nonetheless, the team found the truck loaded with 43 pieces of Narra lumber and 106 pieces of ordinary lumber. Forest Ranger Francisco Pagbilao personally counted the lumber and prepared a report scaled (*sic*) sheet.

The team seized the truck and brought it to Fort Magsaysay. A seizure receipt was issued by the military officers at Fort Magsaysay and Francisco Pagbilao, Alfredo Lantao (*sic*) and Orlando Manzano affixed their signatures therein."⁹

The prosecution thereafter filed its formal offer of evidence.¹⁰ Record shows that Perez, Alday and Cortez filed no comment or opposition thereto.

On 8 November 1999, Perez, Alday and Cortez, through their respective counsels, asked for leave of court to file a demurrer to evidence.¹¹ Accordingly, the court *a quo* granted their motion and gave them twenty (20) days from receipt of order to file the same.¹² However, Perez, Alday and Cortez failed to file the demurrer to evidence. In an *Order* dated 6 December 1999, the court *a quo* considered the filing

thereof waived¹³ and consequently, scheduled the initial presentation of evidence for the defense.

On 1 August 2000, Perez, Alday and Cortez, through their respective counsels, waived their right to present evidence.¹⁴ The court *a quo* then ordered the parties to file their respective memoranda. The parties having failed to file their memoranda, the court *a quo* considered the case submitted for decision in its *Order* dated 2 October 2000.¹⁵

On 18 January 2001, the court *a quo* rendered the assailed *Decision*.

Aggrieved, Cortez (now appellant) interposed the present appeal ascribing to the court *a quo* the following errors:

I

THAT THE LOWER COURT ERRED IN NOT FINDING THE EVIDENCE ADDUCED BY THE PROSECUTION TO BE INSUFFICIENT TO JUSTIFY THE JUDGMENT OF CONVICTION OF THE ACCUSED.

II

THAT THE LOWER COURT ERRED IN NOT ACQUITTING THE ACCUSED APPELLANT FOR INSUFFICIENCY OF EVIDENCE AND/OR ON REASONABLE DOUBT.

We find no merit in the *Appeal*.

Asserting that the court *a quo*'s *Decision* should be set aside, appellant underscores the following improbabilities, contradictions and inconsistencies in the prosecution's evidence, *viz*:

1. In his testimony, Pagbilao testified that the subject incident happened at around 9:00 o'clock in the evening of 6 July 1997 while in the Joint Affidavit (Exhibit A to A-4),¹⁶ it happened in the morning of said date;
2. As to the exact number of confiscated illegally cut lumber, Pagbilao testified that they confiscated 43 pieces of narra and 106 pieces of ordinary lumber, while Lantano testified that they confiscated 1,000 pieces of ordinary lumber, 900 pieces of narra lumber as well as 43 pieces of narra (tablon). In their Joint Affidavit, however, they did not mention anything about how many pieces of narra and ordinary lumber they confiscated;
3. As to who actually prepared the Seizure Receipt,¹⁷ Pagbilao claimed that he was the one who prepared the same. On the other hand, Lantano testified that it was the military men of the 7th Infantry Division at Fort Magsaysay who prepared and issued the said receipt and they were merely required to sign the same;
4. As to the ownership of the illegally cut lumber, the Seizure Receipt and the Scale Sheet¹⁸ showed no acknowledgment from the accused that the lumber indicated therein was taken from them except the bare testimony of the

prosecution witnesses. This omission materially affects the probative value of the aforesaid exhibits specially when Lantano repudiated some of the entries in their sworn statement for having been made without his knowledge and consent; and,

5. The prosecution failed to present any evidence to establish the value of the lumber as alleged in the Information. The value of the subject lumber is a significant and integral part in determining the penalty of the offense charged. Thus, the same should have been proven beyond reasonable doubt

In light of the foregoing, appellant maintains that the prosecution failed to prove his guilt beyond reasonable doubt. Therefore, he must be acquitted.

We are not convinced.

As a rule, inconsistencies or contradictions in the testimony of the witness do not affect the veracity of the testimony if the inconsistencies do not pertain to material points.¹⁹

In the case at bench, the inconsistencies or contradictions raised by the appellant refer to trivial and insignificant details that do not destroy the credibility of the prosecution witnesses. They refer to minor matters such as the time when the subject incident happened, the quantity of the lumber seized and the identity of the person who prepared the Seizure Receipt. Evidently, these do not relate to the elements of the offense charged. Besides, the prosecution, in offering the testimony of Pagbilao, clearly stated that the latter would testify on the subject incident which happened in the morning of 6 July 1997.²⁰ Thus, to Our mind, the fact that Pagbilao, during his direct-examination, answered "yes" when asked if he remembers anything which happened in the evening of 6 July 1997,²¹ is of no moment. It must be emphasized that he consistently affirmed during cross-examination that the incident in question actually happened in the morning of said date.²² Moreover, this is corroborated by the testimonies of Lantano²³ and Manzano.²⁴ Likewise, an examination of the testimony of Lantano shows that there is really no inconsistency as to the quantity of the lumber seized. Lantano declared:

"Q : How many pieces of lumber was loaded?

A : 1,000 pieces ordinary lumber and 900 plus narra lumber, Sir.

Court : Is that by volume or pieces?

A : **Board feet**, Your Honor.

Atty Cruz:

May we move that the answer of the witness be stricken out from the record, My question is how many pieces of lumber was loaded in the truck at the time it was apprehended?

A : 43 narra lumber "tablon", Sir.

Q : Is that the only lumber that was loaded in the truck at that time?

A : There was the ordinary lumber, Sir.