

**REPUBLIC OF THE PHILIPPINES**  
**SANDIGANBAYAN**  
**Quezon City**

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*Seventh Division*

PEOPLE OF THE PHILIPPINES,  
Plaintiff,

Criminal Case No.  
SB-16-CRM-0046

- versus -

*Present:*

VICENTE B. BERMEJO and  
GLENN L. AMANE,  
Accused.

Gesmundo, J.  
*Chairman*  
Gomez-Estoesta, J.  
Trespeses, JJ.

Promulgated:

July 10, 2017 *JP*

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**R E S O L U T I O N**

**TRESPESSES, J.:**

Before this Court is the prosecution's motion seeking reconsideration of the Resolution dated 26 May 2017,<sup>1</sup> which granted accused Vicente Bermejo and Glenn Amane's respective Demurrers to Evidence that consequently, dismissed the case against accused.

**PROSECUTION'S MOTION FOR RECONSIDERATION**

In its motion for reconsideration, the prosecution argues that the 26 May 2017 Resolution of this Court, which held that the subject logs cannot be considered as "confiscated logs" subject to disposition by the DENR Secretary under Section 68-A of P.D. No. 705, as amended, is contrary to its previous Resolution dated 6 April 2016.

It also argues that accused Bermejo himself admitted that the subject logs were confiscated when he referred to the said logs as such in his Memorandum addressed to accused Amane.

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<sup>1</sup> Id. at 173-197.

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The prosecution further stresses that the Apprehension Receipt signed by accused Amane mentioned that the subject logs should not be removed until otherwise ordered by the DENR Secretary, or his duly authorized representative or any court of law.

The prosecution also points out that its witness, Atty. Wilfredo Saraos, testified that the DENR Secretary or his authorized representative has authority to dispose of apprehended items.

The prosecution moreover contends that the accused's reliance on the alleged advice of the City Legal Officer is not a badge of good faith, considering that the City Legal Officer has not been presented to testify on the matter.

The prosecution finally argues that it was able to prove that the accused acted in bad faith when they disposed of the subject logs without authority from the DENR. It claims that the accused committed an unlawful act, and that when it is proven that an unlawful act is committed, it is presumed that they were committed with full knowledge and criminal intent, citing *United States v. Tria*.<sup>2</sup>

#### ACCUSED'S COMMENT/OPPOSITION

Meanwhile, in their Joint Comment/Opposition, accused Bermejo and Amane contend that there is no inconsistency between the two resolutions of the Court. Accused expound that the Resolution dated 6 April 2016 determined only the issue of propriety of the Court's finding of probable cause for the issuance of a warrant for the arrest of the accused. On the other hand, the assailed Resolution dated 26 May 2017 decided the issue of whether the prosecution was able to prove the guilt of the accused beyond reasonable doubt after presenting its evidence. Resolving each of the motions required the concerned party to hurdle a different quantum of evidence.

Accused Bermejo counters that when he referred to the subject logs as "confiscated" items in his 7 January 2008 Memorandum, he merely used the term's ordinary meaning based on his layman's understanding.

As to the Apprehension Receipt, accused Amane argued that the document itself showed that the subject logs were merely apprehended, and not yet confiscated as to be within the DENR's exclusive power to dispose. Also, the statement in the receipt was a standard form of the DENR that accused Amane did not voluntarily or expressly undertake to perform.

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<sup>2</sup> 17 Phil. 303.

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Regarding the testimony of Atty. Wilfredo Saraos that the DENR Secretary or his authorized representative has authority to dispose of apprehended items, accused emphasize that such testimony is a mere opinion of a witness who was not qualified as an expert. It is also a conclusion of law which does not bind the Court.

### OUR RULING

We **deny** the prosecution's motion for reconsideration for lack of merit.

There is no merit to the prosecution's claim that the questioned Resolution goes against the previous Resolution issued by this court. The prosecution particularly quotes the following portion of the 6 April 2016 Resolution of the Court:

We are not persuaded by the accused's argument limiting the exclusive authority of the DENR Secretary or his authorized representative to dispose of the seized logs only after they have been declared "illegal" or confiscated in favor of the government. Under Section 7.3(b) of DENR Department Administrative Order No. 97-32 (DA 97-32), there is a disputable presumption that "any forest products included within Section 2(a) (t) hereof were obtained from an illegal source."<sup>3</sup> (Underscoring supplied.)

The Resolution of this Court dated 6 April 2016 resolved the accused's motion seeking a reevaluation of the existence of probable cause. Among other issues, the Court was tasked to evaluate the accused's argument that the subject logs were not subject to disposition by the DENR Secretary because they have not yet been declared as "illegal" or "confiscated" logs. *Without any evidence yet presented at that stage of the proceedings*, the Court relied on the disputable presumption contained in DENR Administrative Order No. 97-32 in resolving the motion on the judicial determination of probable cause.

However, *after the prosecution presented its evidence*, and the accused having filed a demurrer to evidence, the question of the DENR Secretary's power to dispose of the subject logs must be assessed differently. Resolving a demurrer to evidence calls for appreciation of the evidence adduced by the prosecution, and its sufficiency to warrant conviction beyond reasonable doubt is the yardstick we utilize.<sup>4</sup>

As discussed in the assailed Resolution, the prosecution's evidence yielded that the pertinent laws and rules<sup>5</sup> cited in the Information authorizes

<sup>3</sup> *Rollo*, Vol. I, p. 209.

<sup>4</sup> *People v. Sandiganbayan*, 637 Phil. 147-163 (2010).

<sup>5</sup> The Information (*Rollo*, Vol. I, pp.1-3) cites Section 5 of Memorandum No. 162, Series of 1993, in relation to Section 68-A of Presidential Decree No. 705, as amended by Executive Order No. 277 as the source of the DENR Secretary's power allegedly usurped by the accused.

the DENR Secretary to dispose of “confiscated logs” and that the subject logs are *not* confiscated logs. Hence, the prosecution was not able to prove beyond reasonable doubt that the accused are guilty of the charge of usurpation of official functions of the DENR Secretary under the said laws/rules.

There is likewise no merit to the prosecution’s insistence that this Court give weight to the testimony of Atty. Saraos that the DENR Secretary or his authorized representative has authority to dispose of the subject logs, which have only been apprehended but not yet confiscated.

As a witness, Atty. Saraos (who was not even qualified as an expert) “can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception, except as otherwise provided” in the Rules of Court.<sup>6</sup> Conclusions of law, on the other hand, may be made only by the Court, with its power and duty to interpret the laws.<sup>7</sup>

At any rate, the extent of the DENR Secretary’s power to dispose of logs under Section 5 of Memorandum No. 162, Series of 1993, in relation to Section 68-A of Presidential Decree No. 705, as amended, has already been thoroughly passed upon by the Court in the assailed Resolution.

Neither are we persuaded to reconsider the grant of the demurrer on the ground that the City Legal Officer was not presented to testify on his alleged advice to the accused that the latter may already dispose of the subject logs.

On this score, it must be emphasized that an accused in a criminal case is presumed innocent until the contrary is proved. To overcome the presumption, nothing but proof beyond reasonable doubt must be established by the prosecution.<sup>8</sup> On the other hand, the accused, being presumed innocent, carries no burden of proof on his or her shoulders.<sup>9</sup> Thus, the prosecution’s evidence must stand or fall on its own weight. It cannot rely on the weakness of the defense to make its case.<sup>10</sup>

Precisely, a demurrer to evidence, as in the case at bar, is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. It authorizes a judgment on the merits of the case without the defendant having to submit evidence on his part, as he would ordinarily have to do, if plaintiff’s evidence shows that he is not entitled to the relief sought.<sup>11</sup> Thus, while good faith is a defense in a charge for usurpation

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<sup>6</sup> RULES OF COURT, Rule 130, Section 36.

<sup>7</sup> *Belgica v. Secretary*, 721 Phil. 416-732 (2013).

<sup>8</sup> RULES OF COURT, Rule 133, Section 2.

<sup>9</sup> *People v. Wagas*, G.R. No. 157943, 4 September 2013.

<sup>10</sup> *People v. Preciados*, 402 Phil. 1-25 (2001).

<sup>11</sup> *Republic v. Spouses Gimenez*, G.R. No. 174673, 11 January 2016.

of official functions,<sup>12</sup> the accused's failure to prove the same does not necessarily amount to the prosecution's success in proving the former's criminal intent and bad faith.

Indeed, we do not find merit in the prosecution's claim that it was able to prove bad faith on the part of the accused.

In expounding on its allegation, the prosecution cites the ruling in *United States v. Tria*<sup>13</sup> that when an unlawful act is proven to have been committed, it is presumed that they were committed with full knowledge and criminal intent. Based thereon, it argues that having proven that the accused disposed of the subject logs without authority from the DENR, it was able to prove the accused's commission of an unlawful act. The prosecution then concludes that on the strength of *United States v. Tria*, it may now be presumed that the accused committed the crime of usurpation with full knowledge and criminal intent.

The prosecution's reliance on the ruling in *United States v. Tria* is misplaced.

This disputable presumption, phrased as "(t)hat an unlawful act was done with an unlawful intent," has actually been incorporated in the Rules of Court as Rule 131, Section 3(b).

As explained by the Supreme Court in *Abdulla v. People*,<sup>14</sup> this presumption applies only where the act proven to have been committed is an unlawful act *per se*, to wit:

The Court must have to part ways with the Sandiganbayan in its reliance on Section 5 (b) of Rule 131 as basis for its imputation of criminal intent upon appellant.

For sure, the procedural rule relied upon does not apply at all to this case. Indeed, clear it is from its very language that the disputable presumption of the existence of unlawful or criminal intent presupposes the commission of an unlawful act. Thus, intent to kill is presumed when the victim dies because the act of killing clearly constitutes an unlawful act. xxx

Similarly, intent to gain or *animus lucrandi* is presumed when one is found in possession of stolen goods precisely because the taking of another's property is an unlawful act. xxx

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<sup>12</sup> *Miranda v. Sandiganbayan*, 502 Phil. 423-474 (2005).

<sup>13</sup> *Supra*.

<sup>14</sup> G.R. No. 150129, 6 April 2005.



The presumption of criminal intent will not, however, automatically apply to all charges of technical malversation because disbursement of public funds for public use is *per se* not an unlawful act. xxx

In the absence of any presumption of unlawful intent, the burden of proving by competent evidence that appellants' act of paying the terminal leave benefits of employees of the Sulu State College was done with criminal intent rests upon the prosecution.

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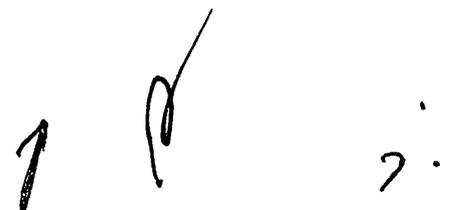
The Sandiganbayan's improper reliance on Sec. 5(b) of Rule 131 does not save the day for the prosecution's deficiency in proving the existence of criminal intent nor could it ever tilt the scale from the constitutional presumption of innocence to that of guilt. In the absence of criminal intent, this Court has no basis to affirm appellant's conviction.

x x x. This calls to mind the oft-repeated maxim *Actus non facit reum, nisi mens sit rea,*' which expounds a basic principle in criminal law that a crime is not committed if the mind of the person performing the act complained of be innocent. Thus, to constitute a crime, the act must, except in certain crimes made such by statute, be accompanied by a criminal intent. It is true that a presumption of criminal intent may arise from proof of the commission of a criminal act; and the general rule is that if it is proved that the accused committed the criminal act charged, it will be presumed that the act was done with criminal intention and that it is for the accused to rebut this presumption. But it must be borne in mind that the act from which such presumption springs must be a criminal act. In the case at bar, the act is not criminal. Neither can it be categorized as *malum prohibitum*, the mere commission of which makes the doer criminally liable even if he acted without evil intent.

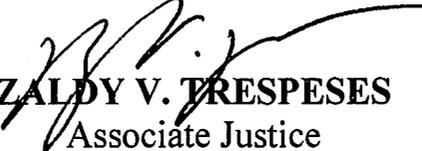
In the present case, releasing the logs for public use without DENR approval does not, of itself, constitute an unlawful act. Hence, the application of the presumption under Rule 131, Section 3(b) of the Rules of Court is unwarranted.

In fine, none of the prosecution's arguments are sufficient to warrant the reconsideration of this Court's assailed Resolution.

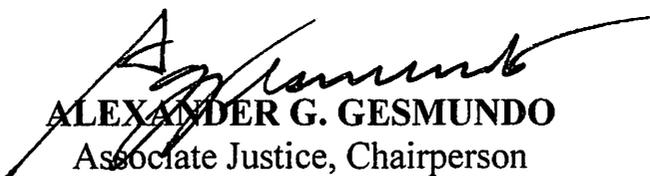
**WHEREFORE**, in view of the foregoing, the prosecution's motion for reconsideration of the Resolution of the Court dated 26 May 2017 is **DENIED** for lack of merit.



**SO ORDERED.**

  
**ZALDY V. TRESPESES**  
Associate Justice

**WE CONCUR:**

  
**ALEXANDER G. GESMUNDO**  
Associate Justice, Chairperson

  
**MA. THERESA DOLORES C. GOMEZ-ESTOESTA**  
Associate Justice