Republic of the Philippines

**REGIONAL TRIAL COURT**

11th Judicial Region

**Branch 57**

Mabini, Davao de Oro

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**CRIM. CASE NO. 604-2019**

**FOR: VIOLATION OF SECTION 77 OF PD 705**

**THE PEOPLE OF THE PHILIPPINES,**

*Plaintiff,*

- versus -

**RENEE PALLERA SUBRICAREY,**

*Accused.*

x - - - - - - - - - - - - - - - - - - - - - - - - x

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

This resolves the DEMURRER TO EVIDENCE filed by accused through counsel, Atty. Mitos Shiela J. Perandos-Evangelista of the Public Attorney’s, contending that the prosecution failed to prove the guilt of the accused beyond reasonable doubt. As such, the defense moved for the dismissal of the case on the ground of insufficiency of evidence.

On September 20, 2019, an Information was filed with the Court against the above-named accused for violation of Section 77, paragraph b, of Presidential Decree No. 705 (PD 705), otherwise known as the Revised Forestry Code of the Philippines, as amended. The accusatory portion of the Information states:

**INFORMATION**

The undersigned accuses **RENEE PALLERA SUBRICAREY**, for Violation of Section 77 paragraph b of P.D. 705 as amended, committed as follows:

That on or about **February 13, 2019**, in the Municipality of **Maco**, Province of Compostela Valley, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to gain and without the necessary legal authority nor documents prescribed by the Department of Environment and Natural Resources (DENR) Rules and Regulations, did then and there willfully, unlawfully and knowingly gather, collect, possess, control and transport ninety six (96) pieces of Falcata logs with a volume of 8.80 cubic meters with estimated value of Twenty two thousand fifty pesos (P22,050.00), Philippine Currency, transporting the same via an Isuzu Forward Truck bearing plate number GJJ-551 owned by MALVIN DELI-DELI, to the damage and prejudice of the Government.

CONTRARY TO LAW.[[1]](#footnote-1)

On August 18, 2020, accused was arraigned and pleaded not guilty to the Information. Pre-trial was immediately conducted during which the prosecution and defense stipulated on the following: (1) The name and identity of the accused as corrected in the Information; and (2) accused failed to attend the Administrative Proceedings before CENRO Maco on March 14, 2019 instead, he was represented by his wife in the said Administrative Proceedings.[[2]](#footnote-2)

Trial ensued, and the prosecution was able to present seven (7) witnesses, namely: Bernardino C. Vargas, Johnny Lopez, Efraim W. Peńalas, Amelda Vera Cruz, Malvin Deli-Deli, PSSG Hamedan B. Ajiji, and Jodil Magdagay.

On October 1, 2020, the prosecution presented its first witness: Bernardino C. Vargas (Forester Vargas, for brevity), Forester III of the Community Environment and Natural Resources Office (CENRO), Maco, Compostela Valley (now Davao de Oro) and the Chief of the Forest Protection unit of the said office. He identified the following documents: Summary of the Administrative Proceedings on the Case No. 021319,[[3]](#footnote-3) Custody of Seized Items,[[4]](#footnote-4) and Apprehension Receipt.[[5]](#footnote-5) He testified that **(1)** he was the one who filed the present case against accused and the chairperson of the administrative proceedings conducted for this case with Johnny Lopez and Efraim W. Peńalas as panel members; **(2)** their office conducted three proceedings in this case; **(3)** in all the proceedings, only the truck driver, truck owner and apprehending officer were present; and **(4)** the wife of accused only attended once, but witness could not remember the reason why the accused failed to attend.[[6]](#footnote-6)

Thereafter, the prosecution presented its second witness: Johnny Lopez (Officer Lopez) who is the Assistant Forest Protection Officer of CENRO Maco. He also identified the same documents already identified by Forester Vargas. He testified that **(1)** he is a member of the committee who heard the case of accused; **(2)** they heard the case only once for the reason that they failed to send the letter to accused considering that the place of accused is far; **(3)** the wife of accused allegedly told them that it was accused who cut the tree in Barangay Sangab, Maco, but witness could not remember from whom accused bought the log bolts; **(4)** the wife of accused told them that accused could not attend as he was busy with work; **(5)** witness found based on the testimony of the driver and the military who apprehended that accused was the one who cut the Falcata log bolts so they recommended for the filing of the case and the confiscation of the log bolts in favor of the government; **(6)** he is the evidence custodian of the confiscated log bolts which were turned over to him by Maco Municipal Police Station; and **(7)** his co-workers surnamed Batara, Pasay and Peñalas conducted the scaling of the products.[[7]](#footnote-7)

On cross-examination on March 4, 2021, Officer Lopez further testified **(1)** on February 13, 2019, the driver Jodil Magdagay together with Sergio Ragusta, Lloyd Carpentero and Jimmy Jinayon were arrested by the members of the Philippine Army based on the reports from PNP Maco coming from the 71st Infantry Brigade that an ISUZU forward truck bearing plate no. GJJ1551 owned by Melvin Delideli was intersected for allegedly carrying forest products without permit; **(2)** it was based on said report that an administrative hearing was conducted; **(3)** during that hearing, it was established that those persons that I mentioned earlier Jodil Magdagay, Sergio Ragusta, Lloyd Carpentero and Jimmy Jinayon were found in possession of the forest products; **(4)** during the hearing, these persons Jodil, Sergio, Lloyd, and Jimmy were invited to their office, but only Jodil who is the truck driver attended; **(5)** it was during the hearing that the name of accused was brought up, as testified to by the truck driver Jodil; **(6)** their office filed a case against accused based on the testimony of the truck driver and the admission of the wife of accused that it was her husband who cut the subject log bolts; **(7)** when asked why her husband could not attend the hearing, the wife allegedly said that her husband was afraid to come; **(8)** the wife did not execute a sworn statement to that effect; **(9)** when asked, he confirmed that their office did not file cases against Jodil Magdagay, Sergio Ragusta, Lloyd Carpentero and Jimmy Jinayon were found in possession of the forest products; and **(10)** he had no personal knowledge of the fact that accused actually committed the offense.[[8]](#footnote-8) On clarificatory, Officer Lopez admitted that the truck was not owned by the accused, but by Malvin Deli-Deli.[[9]](#footnote-9)

On May 4, 2021, the prosecution presented its third witness: Efraim W. Peńalas (Officer Peńalas) who is one of the CENRO personnel who was part of the team who conducted scaling and investigation in this case. He identified the following documents: Joint Affidavit;[[10]](#footnote-10) Summary of the Administrative Proceedings on the Case No. 021319[[11]](#footnote-11) previously identified by the two witnesses; Turn-Over of Apprehended Forest Products at New Visayas, Maco, Compostela Valley;[[12]](#footnote-12) Tally Sheet on Apprehended Forest Products;[[13]](#footnote-13) and pictures showing the truck loaded with Falcata log bolts.[[14]](#footnote-14) He also identified the accused and testified that **(1)** in their investigation, they gathered information from the police, Philippine Army and barangay to determine the real perpetrator in this case; **(2)** after the administrative proceeding, they identified the accused as the perpetrator; **(3)** he admitted that it was the 71st Infantry Brigade, Philippine Army who apprehended the forest products; **(4)** it was PSSG Hamedan B. Ajiji of PNP Maco who requested his presence to conduct scaling of the confiscated forest products; **(5)** it was PNP Maco who turned over the forest products to CENRO Maco; and **(6)** the transportation of the forest products was not covered by a permit.[[15]](#footnote-15)

On cross-examination, Officer Peńalas further testified that **(1)** when the truck owned by Deli-deli which was loaded with Falcata logs was confiscated, the 71st Infantry Brigade apprehended the driver Jodil S. Magdagay and other persons, namely: Sergio Ragusta, Lloyd Carpentero and Jimmy Jinayon who were found in possession of the said forest products; **(2)** based on the summary proceeding, it was Deli-deli who instructed the truck driver Jodil S. Magdagay to load, carry and transport those Falcata logs; **(3)** based on the Administrative Report, it was the accused who owned the Falcata logs, but admitted they do not have any document to prove the same; **(4)** they also do not have any document to prove the transaction between the accused and Deli-deli; and **(5)** the wife of accused executed an affidavit or sworn statement, but he has no knowledge of whether it was attached to their records or subscribed by a notary public.[[16]](#footnote-16)

On August 3, 2021, the prosecution presented its fourth witness: Amelda Vera Cruz, the former Community Environment and Natural Resources Officer (CENRO) of DENR CENRO-Maco, and is currently the CENRO of DENR CENRO-Panabo. The prosecution and defense agreed to stipulate that she was the one who issued the Certification[[17]](#footnote-17) dated June 25, 2019 to the effect that the accused Renee Pallera Subricarey did not file and request a permit to transport logs.[[18]](#footnote-18)

Thereafter, the prosecution presented its fifth witness who is the truck owner Malvin Deli-deli who identified the Affidavit[[19]](#footnote-19) he executed, and testified that **(1)** he does not personally know the accused and knew him only during the apprehension of his truck when the accused called him over the phone, introduced himself as Renee Pallera Subricarey and informed him that his truck was apprehended; **(2)** he called Jodil S. Magdagay whom he employed as his extra driver who told him that the truck was confiscated as they loaded Falcata logs; **(3)** he thought that they were loading corn considering that Jodil, his helper and his original driver Antonio were talking about a corn loaded to his truck and he knows that the product of the area there is planted with corn referring to Barangay Sangab, Maco; **(4)** he never met the accused; **(5)** it was Jodil and Antonio who approached him to hire the truck for Five Thousand Pesos (P5,000.00) and they will load something in Sangab, Maco; **(6)** he attended the hearing before CENRO Maco four times; and **(7)** JODIL did not attend, as well as the accused. On cross-examination, he confirmed that **(8)** it was his original driver, Antonio, who hired his truck; **(9)** there was no document proving the transaction between him and Antonio; and **(10)** he only personally saw accused for the first time during the court hearing.[[20]](#footnote-20)

On November 25, 2021, before the prosecution presented its sixth witness: PSSG Hamedan B. Ajiji (PSSG Ajiji), it agreed to stipulate with the defense the fact that it was PSSG Ajiji who recorded into the blotter the incident subject matter of this case and he extracted the same from the Police Blotter Book. PSSG Ajiji identified the excerpt copy of the Police Blotter with Entry Number 00456[[21]](#footnote-21) dated February 13, 2019.[[22]](#footnote-22)

On May 26, 2022, the prosecution presented the truck driver Jodil S. Magdagay as its seventh witness who identified the picture[[23]](#footnote-23) of the truck he was driving when he was arrested on February 13, 2019.[[24]](#footnote-24) He testified that **(1)** he was the driver of the truck subject matter of this case and it was owned by Malvin Deli-deli; **(2)** he first worked with the latter for two years as helper then he transferred to another employer, but at the time of the incident, Deli-deli asked him to drive his truck from the mountain going to Tagum City; **(3)** upon seeing the truck loaded with logs, he called Malvin Deli-deli who instructed him to drive the truck going downhill and told him it had an escort; **(4)** when the truck was flagged down by the soldiers somewhere in Brgy. New Visayas, he called Malvin Deli-deli and asked him where is the escort he mentioned who were supposed to settle the matter with the soldiers; **(5)** the escort did not show up and that was the time they were brought to Maco Municipal Police Station; **(6)** while detained thereat, Malvin Deli-deli brought them dinner and talked to the police officers at the station; and **(7)** Malvin Deli-deli did not tell him anything about the cargo of the truck.[[25]](#footnote-25)

During continuation of trial on July 19, 2022 and October 4, 2022, the prosecution presented no witness. Hence, it terminated its presentation of evidence.[[26]](#footnote-26)

On October 18, 2022, the prosecution submitted its Formal Offer of Exhibits.[[27]](#footnote-27) The defense filed its Comment.[[28]](#footnote-28) On November 11, 2022, the Court admitted in evidence the exhibits formally offered.[[29]](#footnote-29) Thereafter, the defense filed the Motion for Leave Court to File Demurrer to Evidence,[[30]](#footnote-30) which the Court granted.[[31]](#footnote-31)

On December 5, 2022, the defense filed its Demurrer to Evidence[[32]](#footnote-32) with the contention that none of the witnesses presented by the prosecution has seen or caught accused cutting, gathering, collecting or removing the alleged Falcata logs from alienable or disposable public land, or from private land, without any authority. Accused was likewise not caught or found in possession or custody of the alleged Falcata logs when the Isuzu forward truck was flagged down and intercepted on February 13, 2019 in New Visayas, Maco, Davao de Oro. The defense argues that accused was never in the said truck and nobody testified having seen him during the apprehension.

The issue presented for the Court’s resolution is whether, based on its evidence, the prosecution proved the guilt of the accused beyond reasonable doubt for violation of Section 77 of PD 705, as amended.

Section 2, Rule 133 of the Revised Rules on Evidence states:

Section 2. Proof beyond reasonable doubt. — In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof, excluding possibility of error, produces absolute certainly. Moral certainly only is required, or that degree of proof which produces conviction in an unprejudiced mind.

The afore-cited section provides the requisite quantum of evidence in criminal cases. This rule places upon the prosecution the task of establishing the guilt of an accused, relying on the strength of its own evidence, and not banking on the weakness of the defense of an accused.[[33]](#footnote-33)

Accused **RENEE PALLERA SUBRICAREY** was charged with violation of Section 77 of PD 705, which states:

**SECTION 77.** *Cutting, Gathering and/or collecting Timber, or Other Forest Products Without License.* – Any person who shall cut, gather, collect, removed 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 legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code: x x x

The court shall further order the confiscation in favor of the government of the timber or any forest products cut, gathered, collected, removed, or possessed as well as the machinery, equipment, implements and tools illegally used in the area where the timber or forest products are found.

As has been jurisprudentially held, Section 77, as afore-cited, punishes three categories of acts: (1) the cutting, gathering, collecting, or removing of timber or other forest products from any forest land without any authority; (2) the cutting, gathering, collecting, or removing of timber from alienable or disposable public land, or from private land without any authority; and (3) the possession of timber or other forest products without the legal documents as required under existing forest laws and regulations.

As alleged in the Information, accused **RENEE PALLERA SUBRICAREY** was charged with the **gathering, collecting, possession, control and transportation** of ninety six (96) pieces of Falcata logs with a volume of 8.80 cubic meters with estimated value of P22,050.00 via an Isuzu Forward Truck bearing plate number GJJ-551 owned by MALVIN DELI-DELI.

In this case, it is undisputed that the gathering, collection, possession, control and transportation of Falcata logs was made without authority or without the legal documents as required under existing forest laws and regulations.

Actual possession cannot be attributed to the accused considering that he was not with the truck driver Jodil S. Madagay and three others at the time of the incident. There is also no evidence identifying the accused as the one who actually gathered and collected the said logs. Hence, it has to be determined whether accused **RENEE PALLERA SUBRICAREY** can be charged with constructive possession of the said logs which were transported without the prescribed permit or authority, OR whether it was accused who caused the gathering, collection and transportation of the same.

When applied to violations of PD 705, possession, under the law, includes not only actual possession, but also constructive possession. Actual possession exists when the object of the crime is in the immediate physical control of the accused. On the other hand, constructive possession exists when the object of the crime is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found.[[34]](#footnote-34)

A perusal of the exhibits formally offered as well as that of the testimonies of the prosecution’s witnesses will show that there is insufficient evidence to prove the guilt of accused **RENEE PALLERA SUBRICAREY** either by constructive possession of the Falcata logs or by causing the gathering, collection and transportation of the same without the prescribed permit or authority.

Based on the prosecution’s Resolution[[35]](#footnote-35), quoting from the Summary of the Administrative Proceedings on the Case No. 021319,[[36]](#footnote-36) it gave credence to the testimony of the truck driver, Jodil Magdagay who denied personal knowledge of the transaction which caused the illegal transportation of the logs, as it was only “between MR. MALVIN DELI-DELI and MR. REY SOBRICAREY.” Moreover, the Joint Affidavit[[37]](#footnote-37) executed by Officer Peńalas identified accused as the alleged owner of the confiscated forest products. In the Affidavit[[38]](#footnote-38) of truck owner Malvin Delideli, he stated that it was accused who called him asking to hire his truck for the transportation of Falcata logs from Brgy. Sangab, Maco, and assured him that the logs are covered with necessary permits.

In the Summary of the Administrative Proceedings on the Case No. 021319,[[39]](#footnote-39) aside from the representation of truck owner Malvin Deli-deli of his transaction with **RENEE PALLERA SUBRICAREY**, the name of accused was mentioned by the apprehending officer CPL Russell O. Calica as the owner of the forest product. It was also mentioned by truck driver Jodil S. Magdagay identifying accused as the occupant of the area where the logs originated, hence, the owner of the logs, but denied personal knowledge of the transaction between the accused and the truck owner. The wife of accused who attended the hearing allegedly told the committee that the forest products came from the timberland of Sangab, Maco owned by the indigenous people from whom her husband bought the Falcata logs and transported the same without securing permit from the DENR.

It is clear from the foregoing that the participation of the accused in this case as the principal is only based on the testimonies of the truck driver Jodil S. Magdagay and the truck owner Malvin Deli-deli. The testimonies of the apprehending officer CPL Russell O. Calica and the wife of accused Lindylou V. Sobricarey who were not presented in Court to confirm the veracity of their statements made during the administrative proceeding shall not be given weight and credit.

Moreover, it must be pointed out that the truck owner gave inconsistent testimonies. ***Firstly***, he testified in Court that he came to know accused only during the apprehension of his truck when the accused called him over the phone, introduced himself and informed him that his truck was apprehended when he stated in his Affidavit[[40]](#footnote-40) that it was accused who called him asking to hire his truck for the transportation of Falcata logs and assured him that the logs are covered with necessary permits; ***Secondly***, he testified that it was his extra driver Jodil and original driver Antonio who approached him to hire the truck for P5,000.00; and ***Lastly***, he testified that the products he knew to be loaded to his truck was corn when in his Affidavit he admitted that he contracted for the loading of Falcata logs. For these reasons, the testimony of the truck owner must not inspire belief.

As regards the truck driver, Jodil S. Magdagay, he admitted that he has no personal knowledge of the transaction between the truck owner and accused. It also appears that his knowledge of accused was also based on what he’s told by the truck owner. Hence, his testimony is not credible enough to pinpoint accused as the principal author of this offense.

For the failure of the prosecution to prove the participation of accused as the owner of the Falcata logs, it failed to prove constructive possession. There is nothing in the record which supports the allegation that the Falcata logs were under the dominion and control of the accused or that he has the right to exercise dominion and control over the truck which transported the logs. There is also no evidence positively identifying accused as the one who caused the gathering, collection and transportation of the said logs.

All the evidence formally offered taken altogether, the prosecution failed to establish the guilt of accused beyond reasonable doubt. It failed to overcome the presumption of innocence in favor of the accused. Its evidence does not support a finding of guilt with the certainty that accused was responsible for the gathering, collecting, possession, control and transportation, without permit or authority, of the ninety six (96) pieces of Falcata logs with a volume of 8.80 cubic meters subject matter of this case.

**WHEREFORE**, the Demurrer to Evidence filed by the accused is **GRANTED**. CRIMINAL CASE NO. 604-2019 against accused **RENEE PALLERA SUBRICAREY** is hereby ordered **DISMISSED.**

**SO ORDERED.**

Given this 21st day of February, 2023 at Mabini, Davao de Oro, Philippines.

**CELESTIAL V. ARANDA-GONZALES**

Presiding Judge

Copy Furnished:

**OFFICE OF THE PROVINCIAL PROSECUTOR**

Nabunturan, Davao de Oro

**ATTY. MITOS SHIELA J. PERANDOS-EVANGELISTA**

Public Attorney’s Office, Mabini District Office, Mabini, Davao de Oro

1. Rollo, p. 3. [↑](#footnote-ref-1)
2. Rollo, pp. 68-69. [↑](#footnote-ref-2)
3. Rollo, pp. 13-18. [↑](#footnote-ref-3)
4. Rollo, p. 25. [↑](#footnote-ref-4)
5. Rollo, p. 24. [↑](#footnote-ref-5)
6. TRANSCRIPT OF STENOGRAPHIC NOTES dated OCTOBER 1, 2020. [↑](#footnote-ref-6)
7. Ibid. [↑](#footnote-ref-7)
8. TRANSCRIPT OF STENOGRAPHIC NOTES dated MARCH 4, 2021. [↑](#footnote-ref-8)
9. Ibid. [↑](#footnote-ref-9)
10. Rollo, p. 11. [↑](#footnote-ref-10)
11. Rollo, pp. 13-18. [↑](#footnote-ref-11)
12. Rollo, p. 21. [↑](#footnote-ref-12)
13. Rollo, p. 23. [↑](#footnote-ref-13)
14. Rollo, p. 22. [↑](#footnote-ref-14)
15. TRANSCRIPT OF STENOGRAPHIC NOTES dated MAY 4, 2021. [↑](#footnote-ref-15)
16. Ibid. [↑](#footnote-ref-16)
17. Rollo, p. 12. [↑](#footnote-ref-17)
18. TRANSCRIPT OF STENOGRAPHIC NOTES dated AUGUST 3, 2021. [↑](#footnote-ref-18)
19. Rollo, p. 36. [↑](#footnote-ref-19)
20. Ibid. [↑](#footnote-ref-20)
21. Rollo, p. 26. [↑](#footnote-ref-21)
22. Rollo, p. 110. [↑](#footnote-ref-22)
23. Rollo, p. 22. [↑](#footnote-ref-23)
24. Rollo, p. 126. [↑](#footnote-ref-24)
25. TRANSCRIPT OF STENOGRAPHIC NOTES dated MAY 26, 2022. [↑](#footnote-ref-25)
26. Rollo, p. 135. [↑](#footnote-ref-26)
27. Rollo, pp. 136-158. [↑](#footnote-ref-27)
28. Rollo, pp. 160-161. [↑](#footnote-ref-28)
29. Rollo, p. 159. [↑](#footnote-ref-29)
30. Rollo, pp. 163-164. [↑](#footnote-ref-30)
31. Rollo, p. 166. [↑](#footnote-ref-31)
32. Rollo, pp. 72-74. [↑](#footnote-ref-32)
33. NILO MACAYAN, JR. y MALANA, Petitioner, vs. PEOPLE OF THE PHILIPPINES, Respondent, G.R. No. 175842, March 18, 2015. [↑](#footnote-ref-33)
34. CRISOSTOMO VILLARIN and ANIANO LATAYADA, Petitioners, vs. PEOPLE OF THE PHILIPPINES, Respondent, G.R. No. 175289, August 31, 2011. [↑](#footnote-ref-34)
35. Rollo, pp. 5-7. [↑](#footnote-ref-35)
36. Rollo, pp. 144-149. [↑](#footnote-ref-36)
37. Rollo, p. 142. [↑](#footnote-ref-37)
38. Rollo, p. 158. [↑](#footnote-ref-38)
39. Rollo, pp. 144-149. [↑](#footnote-ref-39)
40. Rollo, p. 158. [↑](#footnote-ref-40)