G.R. No. 224469 – DIOSDADO SAMA *y* HINUPAS and BANDY MASANGLAY *y* ACEVEDA, *Petitioners*, **v. PEOPLE OF THE PHILIPPINES,** *Respondent*.

Promulgated:

January 5, 2021

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SEPARATE CONCURRING OPINION

PERLAS-BERNABE, *J.*:

I concur in the result. Petitioners Diosdado Sama *y* Hinupas and Bandy Masanglay *y* Aceveda (petitioners) should be acquitted for the prosecution's failure to prove beyond reasonable doubt their criminal liability under Section 77 of the Forestry Code, as amended (Section 77).[1]

The essential facts are as follows: petitioners, who are part of the Iraya-Mangyan tribe, are among the indigenous peoples (IPs) in Mindoro. On March 15, 2005, they were caught cutting a *dita* tree using an unregistered power chainsaw, and were consequently charged under Section 77. While petitioners admit that they had no license to cut the tree, they argue that their act was justified pursuant to their right to utilize the natural resources within their ancestral domain for a communal purpose – that is, to build a community toilet. They also aver that as IPs, they are allowed to cut trees within their ancestral domain as part of their right to cultural integrity pursuant to the Indigenous Peoples' Rights Act of 1997[2] (IPRA). The lower courts, however, convicted them based on a strict application of the penal provision, holding that a violation of Section 77 is considered *malum prohibitum*.

At the onset, emphasis must be made on the fact that this case only centers on the **criminal liability** of herein petitioners for cutting one tree within their ancestral domain for the undisputed purpose of building a community toilet. They claim that such acts were done for the benefit of their IP community, and therefore, amounts to an apparent **legitimate exercise** of their right to use natural resources within their ancestral domain. In the court *a quo*'s proceedings, the prosecution neither questioned the purpose for which the *dita* tree was to be used nor presented any evidence as regards the use of such tree for the benefit of non-IPs. This case, therefore, must be resolved on

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1 See Revised Forestry Code of the Philippines, Presidential Decree No. 705, May 19, 1975, as amended by Executive Order No. 277, July 25, 1987, and renumbered pursuant to Section 7 of Republic Act No. (RA) 7161, October 10, 1991.

2 Entitled, "AN ACT TO RECOGNIZE, PROTECT AND PROMOTE THE RIGHTS OF INDIGENOUS CULTURAL COMMUNITIES/INDIGENOUS PEOPLES, CREATING A NATIONAL COMMISSION ON INDIGENOUS PEOPLES, ESTABLISHING IMPLEMENTING MECHANISMS, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on October 29, 1997.

the basis of the peculiar circumstances attendant herein. **Elementary is the rule in criminal law that the accused is entitled to an acquittal when there is reasonable doubt**. To stress, the Court is called upon in this case to determine petitioners' criminal liability under Section 77 based on the specific facts established herein. Similar to Associate Justice Alfredo Benjamin S. Caguioa, I espouse a sentiment of judicial restraint in going over and beyond this framework of analysis, and in so doing, unnecessarily demarcate constitutional lines and borders that would gravely impact the rights of IPs in general relative to the application of environmental regulations affecting them.

In determining criminal liability, the elements of the crime must be proven to exist by the highest threshold of evidence – that is, proof beyond reasonable doubt. In this regard, case law states that:

> Proof beyond reasonable doubt charges the prosecution with the immense responsibility of establishing moral certainty. The prosecution's case must rise on its own merits, not merely on relative strength as against that of the defense. Should the prosecution fail to discharge its burden, acquittal must follow as a matter of course.

Corollary to the foregoing, this Court has held that "the existence of criminal liability for which the accused is made answerable must be clear and certain. We have consistently held that penal statutes are construed strictly against the State and liberally in favor of the accused. **When there is doubt on the interpretation of criminal laws, all must be resolved in favor of the accused**."[3]

On its face, the first offense under Section 77[4] may be broken down into the following elements:

a. **Cutting**, gathering, collecting and removing:
   (i) timber or other forest products from any forest land; or
   (ii) **timber** from alienable or disposable public land or from private land; and
b. the said act/s is/are done **without any authority**.

Relevant to the first element under Section 77 is Section 2, Article XII of the 1987 Constitution, which provides:

> SECTION 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or **timber**, wildlife, flora and fauna, and other **natural resources are owned by the State.** With the exception of agricultural lands, all other **natural resources shall not be alienated**. The exploration, development,

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3 *Ient v. Tullett Prebon (Philippines), Inc.*, 803 Phil. 163, 185-186 (2017); citation omitted.

4 According to case law, Section 77 punishes two (2) separate offenses. See *Revaldo v. People*, 603 Phil. 332, 342 [2009]).

> and **utilization of natural resources shall be under the full control and supervision of the State.** x x x
>
> x x x x
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> The Congress may, by law, **allow small-scale utilization of natural resources** by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons. (Emphases and underscoring supplied)

As explicitly stated, all "natural resources are owned by the State."[5] While categories of lands (*i.e.*, lands of public domain and agricultural lands) were therein provided, there is no qualifier created for timber and other natural resources.[6] Moreover, while the provision allows the alienation of agricultural lands, it prohibits the alienation of natural resources. Accordingly, it is sufficiently apparent that Section 77 punishes the cutting of timber – a natural resource – regardless of the character of the land where the tree was once situated.

Consistent with the State's ownership of natural resources, Section 57 of the IPRA accords IPs "priority rights" in the utilization of natural resources. The fact that the IPRA does not bestow ownership of natural resources has been discussed in the congressional deliberations therefor:[7]

> HON. DOMINGUEZ. Mr. Chairman, if I may be allowed to make a very short Statement. Earlier, Mr. Chairman, *we have decided to remove the provisions on natural resources because* ***we all agree that belongs to the State.*** Now, the plight or the rights of those indigenous communities living in forest and areas where it could be exploited by mining, by dams, so can we not also provide a provision to give little protection or either rights for them to be consulted before any mining areas should be done in their areas, any logging done in their areas or any dam construction because this has been disturbing our people especially in the Cordilleras.

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5 The declaration of State ownership and control over natural resources in the 1935 Constitution was reiterated in both the 1973 and 1987 Constitutions.

6 See Professor Marvic M.V.F. Leonen (now Supreme Court Associate Justice), *The Indigenous Peoples' Rights Act: An Overview of Its Contents,* 4 [13] The PHILJA Judicial Journal 53-79, (2002): "Look at the provision in Section 2, Article XII of the Constitution: x x x **There is a qualifier to land, but no qualifier to timber.** It does not say timber planted on private land, or public or private timber, unlike in other systems in different parts of the world. In our jurisdiction, **timber is always public domain; it cannot be alienated as timber.** Of course, rights to timber can be alienated, but the timber itself cannot be alienated. And that is, the justification for the Forestry Code's allowance to the Department of Environment and Natural Resources [DENR] to grant a permit for tree-cutting. If it stands on private land, there is the special tree-cutting permit[.]" (pp. 63-64)

7 See Justice Kapunan's opinion in, *Cruz v. Secretary of Environment and Natural Resources*, 400 Phil. 904, 1064 (2000).

Based on the foregoing, the subject timber[8] or *dita*[9] tree in this case was owned by the State even if it stood within an ancestral domain.[10] Considering that petitioners admitted that they cut the *dita* tree found within the ancestral domain, there is proof beyond reasonable doubt that the first element of Section 77 is present in this case.

On the contrary, however, it is doubtful that the second element of Section 77 obtains in this case. This is considering the undisputed contention that petitioners' act of cutting a singular *dita* tree was made pursuant to their rights as IPs.

To my mind, the intent behind Section 77 is the conservation of our natural resources consistent with the State's general policy to protect the environment. However, a review of the laws passed after the Forestry Code reveals that IPs have been granted a limited authority to utilize natural resources located within their ancestral domains as necessary for their subsistence. It is observed that unlike previous constitutions, the 1987 Constitution explicitly and repeatedly declares that the State "recognizes and promotes the rights of indigenous cultural communities."[11] In this regard, it has been stated that "[t]he 1987 Constitution's attitude towards IPs, **with its emphasis on preservation**, is a marked departure from regimes under the 1935 and 1973 Constitutions, which were typified by integration" (*i.e.*, attuning IPs to the mainstream) that "**inevitably tended to measures that eroded [their] identities.**" This shift in the constitutional appreciation of IPs' rights "reorients the State toward **enabling [IPs] to maintain their**

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8 In *Mustang Lumber, Inc. v. CA* (327 Phil. 214, 235 [1996]), the Court stated that while the Revised Forestry Code does not define timber, "[i]t is settled that in the absence of legislative intent to the contrary, words and phrases used in a statute should be given their plain, ordinary, and common usage meaning. And insofar as possession of *timber* without the required legal documents is concerned, Section 68 of P.D. No. 705, as amended, makes no distinction between raw or processed timber. Neither should we. *Ubilex non distinguitnecnosdistingueredebemus*."

9 Merriam-Webster Dictionary defines "timber" as "growing trees or their wood" and "dita" as "a forest tree (*Alstoniascholaris*) of eastern Asia and the Philippines the bark of which was formerly used as an antiperiodic."

10 See Justice Kapunan's opinion in *Cruz v. Secretary of Environment and Natural Resources*, supra note 7, at 1066-1070: "While as previously discussed, native title to land or private ownership by Filipinos of land by virtue of time immemorial possession in the concept of an owner was acknowledged and recognized as far back during the Spanish colonization of the Philippines, there was no similar favorable treatment as regards natural resources. The unique value of natural resources has been acknowledged by the State and is the underlying reason for its consistent assertion of ownership and control over said natural resources from the Spanish regime up to the present." "Having ruled that the **natural resources which may be found within the ancestral domains belong to the State**, the Court deems it necessary to clarify that the jurisdiction of the NCIP with respect to ancestral domains under Section 52[i] of IPRA extends only to the lands, and not to the natural resources therein." See also Justice Panganiban's statement in *IPRA – Social Justice or Reverse Discrimination*, The PHILJA Judicial Journal 157-203 (2002) that "in all the Opinions rendered, there seems to be a general understanding that natural resources within ancestral domains were 'not bestowed' by IPRA on the indigenous people." p. 172.

11 See Section 22, Article II (Declaration of Principles and State Policies) of the 1987 Constitution which provides that: "The State recognizes and promotes the *rights* of indigenous cultural communities within the framework of national unity and development." See also Section 17, Article XIV thereof, to wit: "The State shall recognize, respect, and protect the *rights of indigenous cultural communities* to preserve and develop their cultures, traditions, and institutions. It shall *consider* these rights in the formulation of national plans and policies."

identity,"[12] which is, *inter alia*, characterized by the integral connection between their culture and the environment.

In this relation, it is apt to mention that Article 27 of the United Nations Convention on International Civil and Political Rights (Article 27) – to which the Philippines is a signatory – tasks the State party to protect the rights of ethnic minorities "to enjoy their own culture." Interpreting this provision, the United Nations Human Rights Committee (UNHRC) issued General Comment No. 23,[13] declaring that "culture manifests itself in many forms, including a ***particular way of life associated with the use of land resources, especially in the case of [IPs]***." Thus, the UNHRC stated that the State party's obligation under Article 27 includes protecting the IPs' **particular "way of life** which is **closely associated with** territory and [the] use of its **resources**."[14] It concludes that such protection is "directed towards ensuring the survival and continued development of [the IPs'] cultural, religious[,] and social identity." Hence, based on these legal sources, protecting IPs' rights necessitates due regard for the centrality of the IPs' use of natural resources to their cultural identity.

The IPRA, which was enacted under the auspices of the 1987 Constitution, concretized the State's recognition and promotion of all IPs' rights. The protection granted to them is based on the recognition of their way of life,[15] characterized by their holistic relationship with the natural environment. Accordingly, the IPRA acknowledges the IPs' right to *ancestral domains*, which is an all-embracing concept that pertains not only to "lands, inland waters, [and] coastal area" but also to the "*natural resources therein*."[16] Ancestral domains also include land which may no longer be exclusively occupied by them, but to which they "*traditionally* had *access for their subsistence*."[17] Section 5 of the IPRA states that "***all resources found therein* shall serve as the material bases of their cultural integrity**." The same provision explains that the indigenous concept of ownership "covers *sustainable traditional resource rights*," which refers to their right to "sustainably use, manage, protect, and conserve" certain resources.[18] Section 7 (b) of the IPRA also provides for their right to "*manage and conserve natural resources*" and to "share the profits from allocation and *utilization of the natural resources found therein*."[19] Section 57 of the IPRA further grants IPs the *priority rights in the harvesting, extraction, development or exploitation of any natural resources* within their ancestral domains. **Taken**

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12 See *Ha Datu Tawahig v. Lapinid*, G.R. No. 221139, March 20, 2019.

13 UNHCR, CCPR General Comment No. 23: Article 27 (Rights of Minorities), 8 April 1994, CCPR/C/21/Rev.1/Add.5, available at: https://www.refworld.org/docid/453883fc0.html (last accessed on August 26, 2020).

14 Id. See also *J.G.A. Diergaardt (late Captain of the Rehoboth Baster Community) et al. v. Namibia*, Communication No. 760/1997, U.N. Doc. CCPR/C/69/D/760/1997 (2000).

15 See *Ha Datu Tahawig v. Lapinid*, supra note 12. See also Section 4, Chapter III of RA 8371.

16 See Section 3(a) of the IPRA.

17 Id.

18 Section 3(o) of the IPRA.

19 Section 7 of the IPRA recognizes and protects IPs' rights to the ancestral domains including the right to develop lands and natural resources.

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together, these provisions reveal a **legislative intent to authorize IPs to use the resources within their ancestral domain**, in line with the constitutional provision allowing small-scale utilization of natural resources.[20]

Worthy to note that aside from the IPRA, the State has enacted other statutes permitting IPs to utilize natural resources, ***including timber***, within their domains for their domestic needs and subsistence.[21] Of particular significance is the 2018 *Expanded National Integrated Protected Areas System Act* (ENIPAS),[22] which prohibits the "cutting, removing, or collecting [of] *timber* within the protected area x x x without the necessary permit, authorization, certification of planted trees or exemption."[23] **In recognition of IPs' rights,**[24] **an exception is added to the permit requirement**, to wit: "when such acts are done *in accordance with the duly recognized practices of the IPs/ICCs for* ***subsistence purposes.***"[25] While the application of ENIPAS does not fully square with this case, it, however, provides statutory semblance showing the **recognition of IPs' rights in a piece of environmental legislation**. In this relation, it may not be amiss to highlight that the ENIPAS constitutes a ***stricter*** environmental regulation than what is applicable in areas not protected under this statute (as in this case); nevertheless, by the language of the law itself, the ENIPAS still recognizes the foregoing practices of IPs/ICCs as an exception to the prohibition of "cutting, removing, or collecting [of] *timber* within the protected area x x x without the necessary permit, authorization, certification of planted trees or exemption."

When taken against the entire framework of IP rights protection, I submit that there is ample legal basis to argue that the second element of the offense under Section 77 (*i.e.*, "that the said act is done ***without any authority***") equally recognizes, as an exception, the legitimate exercise of IPs' rights pursuant to their own cultural and traditional beliefs.

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20 See paragraph 3, Section 2, Article XII of the 1987 Constitution.

21 For one, the law establishing the government of Benguet has allowed IPs there to use timber and firewood for domestic purposes, particularly for cooking food, warming their houses, constructing their houses, or fencing plots of cultivating grounds. (See Section 20 of the Establishment of a Civil Government for Benguet, Act No. 49, November 23, 1900.) In 2001, the *Northern Sierra Madre Natural Park (NSMNP) Act* was enacted mandating the non-restriction of the *IPs' use of the resources in the NSMNP for their "domestic needs or for their subsistence*" and disallowance of the *use of timber* only if for livelihood purposes. See Section 19, RA 9125, entitled, AN ACT ESTABLISHING THE NORTHERN SIERRA MADRE MOUNTAIN RANGE WITHIN THE PROVINCE OF ISABELA AS A PROTECTED AREA AND ITS PERIPHERAL AREAS AS BUFFER ZONES, PROVIDING FOR ITS MANAGEMENT AND FOR OTHER PURPOSES.

22 RA 11038, June 22, 2018, amending RA 7586.

23 See Section 20 of the ENIPAS, as amended.

24 Section 29 of the ENIPAS reads:

> SEC. 29. *Construction and Interpretation.* – The provisions of this Act shall be construed liberally in favor of the protection and rehabilitation of the protected area and the conservation and restoration of its biological diversity, x x x *Provided*, That nothing in this Act shall be construed as a x x x **derogation of ancestral domain rights under the Indigenous Peoples' Rights Act of 1997**."

25 Section 20 (c) of the ENIPAS reads thus:

> "(c) Cutting, gathering, removing or collecting timber within the protected area including private lands therein, without the necessary permit, authorization, certification of planted trees or exemption such as for culling exotic species; **except**, however, **when such acts are done in accordance with the duly recognized practices of the IPs/ICCs for subsistence purposes.**" (Emphases and underscoring supplied)

Further, it must be noted that the original iteration of Section 77 (then Section 68 of Presidential Decree No. 705 [1975]) was passed under the 1973 Constitution and specifically described "authority" as being "*under a license agreement, lease, license or permit.*"[26] However, soon after the enactment of the 1987 Constitution or in July 1987, then President Corazon Aquino issued Executive Order No. 277 (EO 277) amending Section 77, which, among others, removed the above-mentioned descriptor, hence, leaving the phrase "*without any authority*," generally-worded. To my mind, **the amendment of Section 77 may be read in light of the new legal regime which gives significant emphasis on the State's protection of our IPs' rights, which includes the preservation of their cultural identity. Given that there was no explanation in EO 277 as to the "authority" required,** it may then be reasonably argued that the amendment accommodates the legitimate exercise of IPs' rights within their ancestral domains.

In this relation, the esteemed Chief Justice Diosdado M. Peralta has argued that the "authority" required under Section 77 must be understood as still requiring licenses issued by the DENR because of the provision's heading to wit: "*Cutting, Gathering and/or collecting Timber or Other Forest Products Without License*." A rule, however, in statutory construction, is that headings may be consulted in aid of interpretation, but "inferences drawn from [them] are entitled to very little weight."[27]

Further, it must be borne in mind that Section 77 punishes two separate offenses. In *Revaldo v. People*:[28]

> There are two distinct and separate offenses punished under Section 68 of the Forestry Code, to wit:
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> (1) Cutting, gathering, collecting[,] and removing timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land without any authority; and
>
> (2) Possession of timber or other forest products without the legal documents required under existing forest laws and regulations.[29]

Based on the provision itself, the first offense of cutting, gathering, collecting, removing timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land is **qualified by the general phrase "without any authority,"** whereas the second offense of possessing timber or other forest products is qualified by

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26 The relevant portion of the provision states:

> SEC. 68. *Cutting, Gathering and/or Collecting Timber or Other Products without License.* – Any person who shall cut, gather, collect, or remove timber or other forest products from any forest land, or timber from alienable and disposable public lands, or from private lands, **without any authority** under a license agreement, lease, license or permit, shall be guilty of qualified theft as defined and punished under Articles 309 and 310 of the Revised Penal Code." (Emphasis and underscoring supplied)

27 *Kare v. Platon*, 56 Phil. 248, 250 (1931), citing Black's Interpretation of Laws.

28 603 Phil. 332 (2009).

29 Id. at 342.

the more specific phrase "**without the legal documents as required under existing forest laws and regulations**":

> Sec. 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 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: *Provided*, That in the case of partnerships, associations, or corporations, the officers who ordered the cutting, gathering, collection or possession shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation. (Emphases supplied)

Hence, should the first offense contemplate the requirement of a documentary license, then Congress should not have qualified it with the general phrase "without any authority," and instead, just applied the specific phrase "without the legal documents as required under existing forest laws and regulations" as in the second offense. The Congress' deliberate choice of words therefore reasonably supports the theory above-posited to allow for other exceptions to the first offense outside of the license requirement. At the very least, this creates a looming spectre of doubt in the application of penal law, which, as per our prevailing doctrines in criminal law, must be construed in favor of the accused, as petitioners in this case. To repeat the bedrock dictum, **when there is doubt on the interpretation of criminal laws, all must be resolved in favor of the accused.**

In this case, one (1) *dita* tree located within the ancestral domain was cut down by petitioners. The fact that they intended to use the felled tree to build a shared toilet for their indigenous community is undisputed. As it is equally established that petitioners did so not for any malevolent purpose but merely for their subsistence in line with their tribe's cultural traditions and beliefs, in my view, they should not be held criminally liable for violation of Section 77 of the Forestry Code for the reasons herein explained. As such, I agree with the *ponencia* that they should be acquitted.

ESTELA M. PERLAS-BERNABE
Senior Associate Justice