G.R. No. 224469 – Diosdado Sama y Hinupas and Bandy Masanglay y Aceveda v. People of the Philippines.

Promulgated:
January 5, 2021

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SEPARATE CONCURRING OPINION

ZALAMEDA, *J.*:

Petitioners are before this Court seeking their acquittal from the offense punished under Section 77 of Presidential Decree No. 705 (P.D. 705), specifically the offense of cutting down a tree without the requisite permit or authority. Petitioners, who are members of the Iraya-Mangyan indigenous cultural community (ICC), averred that they are not criminally liable because they were merely exercising their legitimate right to use and enjoy the natural resources within their ancestral domains, and were acting in accordance with their elders' directions.

The People, however, argued that petitioners violated the law when they logged the *dita* tree, for which violation they must be held accountable. They further argue that petitioners, even as members of an indigenous cultural group, enjoy no right more special or distinct from the rest of the Filipino people. Petitioners' mere act of cutting a tree without permit is sufficient for conviction.

I concur in the result reached by my distinguished colleague, J. Lazaro-Javier, in her *ponencia.*

Section 77[1] of P.D. 705, as amended by E.O. No. 277, criminalizes two (2) distinct and separate offenses, namely: (a) the cutting, gathering, collecting and removing of 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 (b) the possession of timber or other forest products without the legal documents required under existing laws and regulations.[2]

Indisputably, jurisprudence has consistently declared the offenses under Section 77 of P.D. 705 to be *mala prohibita*.[3] In this regard, the People, through the Office of the Solicitor General, is correct in arguing that criminal liability attaches once the prohibited acts are committed, and criminal intent is irrelevant for purposes of conviction.[4]

The *malum prohibitum* nature of an offense, however, does not automatically result to a conviction. **The prosecution must still establish that the accused had intent to perpetrate the act.** [5]

Intent to perpetrate has been associated with the actor's volition, or intent to commit the act.[6] Volition or voluntariness refers to knowledge of the act being done.[7] In previous cases, this Court has determined the accused's volition on a case to case basis, taking into consideration the prior and contemporaneous acts of the accused and the surrounding circumstances.[8]

In the early case of *U.S. v. Go Chico*,[9] the accused was convicted of violating Section 1 of Act No. 1696[10] prohibiting the display of any flag, banner, emblem, or device used during the late insurrection in the

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1 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: 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.

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.

2 *Monge v. People*, G.R. No. 170308, 07 March 2008; 571 Phil. 472-481 (2008).

3 *Crescencio v. People*, G.R. No. 205015, 19 November 2014; 747 Phil. 577-589 (2014); *Villarin v. People*, G.R. No. 175289, 31 August 2011; 672 Phil. 155-177 (2011); *Revaldo v. People*, G.R. No. 170589, 16 April 2009; 603 Phil. 332-346 (2009).

4 *Id.*

5 See *Fajardo v. People,* G.R. No. 190889, 10 January 2011; 654 Phil. 184-207 (2011).

6 *ABS-CBN Corp. v. Gozon*, G.R. No. 195956, 11 March 2015; 755 Phil. 709-782 (2015).

7 *Id.*

8 *Dela Cruz v. People,* G.R. No. 209387, 11 January 2016; 776 Phil. 653-701 (2016).

9 G.R. No. 4963, 15 September 1909; 14 Phil. 128-142 (1909).

10 The Flag Law (1907).

Philippines against the United States. In affirming the conviction, this Court rejected the accused's defense that proof of criminal intent is a pre-requisite for conviction under Act No. 1696. The Court explained that there are crimes, such as those punishable under Act No. 1696, where the intention of the person who commits the crime is entirely immaterial. The act itself, without regard to the intention of the doer, produces the evil effects sought to be prevented.

The Court then proceeded to distinguish between intent to commit the crime and intent to perpetrate the act, *viz*:

> Care must be exercised in distinguishing the difference between the intent to commit the crime and the intent to perpetrate the act. The accused did not consciously intend to commit a crime; but he did intend to commit an act, and that act is, by the very nature of things, the crime itself — intent and all. The wording of the law is such that the intent and the act are inseparable. The act is the crime. The accused intended to put the device in his window. Nothing more is required to commit the crime.

In *People v. Bayona,*[11] this Court was faced with determining whether the accused's intention for carrying a firearm within 50 meters from the polling place is material to ruling on the propriety of his conviction. In that case, the accused argued that he had no intention to go inside the polling place, much less to vote or campaign for anybody. The Court found that the accused's intent to perpetrate the act had been sufficiently established. However, it clarified that a man with a revolver, who merely passes along a public road on election day within 50 meters of a polling place does not violate the provision of law in question. For the same reason, a peace officer who pursues a criminal, as well as residents within 50 meters of a polling place who merely clean or handle their firearms within their own residences on election day cannot be considered carrying firearms within the contemplation of the legal prohibition.

In *Magno v. Court of Appeals*,[12] however, this Court looked beyond the accused's issuance of a check in order to determine the propriety of his conviction for violating Batas Pambansa Blg. 22 (BP 22). The Court acquitted the accused upon finding that the checks were issued to cover a warranty deposit in a lease contract, where the lessor-supplier was also the financier of the deposit. The Court noted that the accused did not issue the check on account or for value but as part of a *modus operandi* whereby the supplier of the goods is, at the same time, privately financing the transaction. In acquitting the accused, this Court referred to the utilitarian theory, or the "protective theory" in criminal law, which "affirms that the primary function of punishment is the protection of society against actual and potential

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[11] G.R. No. 42288, 16 February 1935; 61 Phil. 181-186 (1935).
[12] G.R. No. 96132, 26 June 1992; 285 Phil. 983-993 (1992).

wrongdoers." The Court did not consider the accused as the wrongdoer, but rather the victim of a vicious transaction.

On the other hand, the Court, in *People v. De Gracia*,[13] discussed intent to perpetrate in the offense of illegal possession of firearms. The Court held that, in addition to proving the fact of possession of a firearm, the prosecution must also establish that the accused had *animus possidendi* or an intent to possess the firearm. Intent being an internal state of mind, courts are allowed to infer it from prior and contemporaneous acts of the accused, and the surrounding circumstances. Thus, the Court considered the background of the accused as a soldier to conclude that he knew the import of having such a large quantity of explosives and ammunition in his possession. The Court ruled that as long as it is established that the accused freely and consciously possessed the firearm, conviction is proper. Conversely, a temporary, incidental, casual, or harmless possession or control of a firearm cannot be considered as illegal possession of a firearm.

In the same vein, in *People v. Dela Rosa*,[14] this Court acquitted the surrendering rebels of the crime of illegal possession of firearms. The Court ruled that physical or constructive possession of firearms, without *animus possidendi*, is not punishable. The Court found that the four (4) accused had no intent to perpetrate the prohibited act, considering that they already surrendered the firearms prior to the arrival of the police. This Court declared that the accused's possession was harmless, temporary, and only incidental for the purpose of surrendering the weapons to the authorities.

In *Tigoy v. Court of Appeals*,[15] this Court found that the truck driver who transported lumber had intent to perpetrate the offense. After classifying Section 68 of P.D. 705, as amended by Executive Order No. 277, as a *mala prohibita* offense, **the Court stated that conviction for such offense is proper as long as it is established that the act was committed knowingly and consciously.** The Court noted the driver's demeanor upon apprehension by the police - refusing to stop when required by the police and offering "grease money" when he was finally apprehended. The Court held that these actions show the driver had knowledge that he was transporting and was in possession of undocumented lumber in violation of law.

Contrariwise, in *Spouses Veroy v. Layague,*[16] this Court dismissed the criminal case for illegal possession of firearms upon the prosecution's failure to establish that accused spouses had knowledge that firearms were stored in their provincial home in Davao.

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[13] G.R. Nos. 102009-10, 06 July 1994; 304 Phil. 118-138 (1994).
[14] G.R. No. 84857, 16 January 1998; 348 Phil. 173-189 (1998).
[15] G.R. No. 144640, 26 June 2006; 525 Phil. 613-624 (2006).
[16] G.R. No. 95630, 18 June 1992; 285 Phil. 555-566 (1992).

Meanwhile, in cases with two or more accused, this Court has ruled that intent to perpetrate cannot be deduced from the mere presence of a person at a place where a prohibited act was committed. In *Fajardo v. People,*[17] the Court acquitted one of the accused charged with the offense of illegal possession of firearms because it was not proven that she participated or had knowledge or consent of her co-accused's possession of receivers.

In *Saguin v. People*,[18] the accused were an accountant and cashier, respectively, of a provincial hospital. They were charged with violation of Section 23 of PD 1752,[19] as amended, which punishes the failure to remit contributions and loan payments to the Home Development Mutual Fund. Ruling in favor of the accused, the Court noted that the law was worded to punish failure to remit contributions if the same is "without lawful cause or with fraudulent intent." The Court observed that the accused were justified in their non-remittance because the financial operations of the hospital had been devolved to the provincial government, resulting in confusion as to who was responsible for making the remittance.

In *Dela Cruz v. People*,[20] this Court further elaborated that the defense of the accused must be weighed with the prosecution evidence in determining the presence of *animus possidendi*. In assessing the viability of the defense of planting of evidence, courts should consider: (1) the motive of whoever allegedly planted the illegal firearm(s); (2) whether there was opportunity to plant the illegal firearm(s); and (3) the reasonableness of the situation creating the opportunity. In that case, the Court found it unlikely that the firearms would be planted in accused's baggage, as he was a frequent traveler and well-versed with port security measures.

In *Mendoza v. People*,[21] this Court gave credence to the testimony of the accused and his witness that the firearms were placed in the compartment of the motorcycle without his knowledge. The Court noted that the accused was merely a designated driver, and not the owner of the motorcycle; hence, cannot be remotely charged with or presumed to have knowledge of the subject firearm.

Based on the foregoing, it is clear that to determine the presence of an accused's intent to perpetrate a prohibited act, courts may look into the meaning and scope of the prohibition beyond the literal wording of the law. Although in *malum prohibitum* offenses, the act itself constitutes the crime, courts must still be mindful of practical exclusions to the law's coverage, particularly when a superficial and narrow reading of

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[17] G.R. No. 190889, 10 January 2011; 654 Phil. 184-207 (2011).
[18] G.R. No. 210603, 25 November 2015; 773 Phil. 614-630 (2015).
[19] Home Development Mutual Fund Law of 1980.
[20] G.R. No. 209387, 11 January 2016; 776 Phil. 653-701 (2016).
[21] G.R. No. 234196, 21 November 2018.

the same with result to absurd consequences. Further, as in *People v. De Gracia*[22] and *Mendoza vs People,*[23] temporary, incidental, casual, or harmless commission of prohibited acts were considered as an indication of the absence of an intent to perpetrate the offense.

In the United States, the legislature's authority to define criminal acts, and dispense with the requirement of criminal intent for their conviction, is also equally settled.[24] The State may, in the exercise of police power, impose regulatory measures where the emphasis of the statute is evidently upon achievement of some social betterment rather than the punishment of the crimes as in cases of *mala in se*. Such class of offenses, in the absence of an express provision to the contrary, do not require a specific criminal intent.[25] However, there are cases where US federal courts order the defendants' acquittal for prohibitory offenses if it is established that they had no knowledge of the prohibition.

In *Lambert v. California*,[26] the US Supreme Court reversed the defendant's conviction for violating a Los Angeles Municipal Code that makes it a criminal offense a felon, convicted elsewhere in California, to be present in Los Angeles without registering with the police. The US Supreme Court explained that conviction is improper if it was not established that the defendant knew the duty to register and where there was no proof of the probability of such knowledge.

The New York district court applied the same reasoning in *United States v. Barnes*,[27] when it reversed the conviction of the defendant, a convicted sex offender in New York, who moved to New Jersey in 2005 without informing the requisite authorities in either state. In that case, the district court found that the defendant could not have complied with the federal law requiring him to update his residence information despite state law necessitating the same procedure. The Court found that the federal and state laws differ in that the latter provided for a dramatically lesser penalty than the former. It also noted the impossibility of compliance since the defendant had no knowledge, at the time he moved to New Jersey and prior to the promulgation of the federal rule, that the same would have retroactive application.

Significantly, the US Supreme Court has always considered the complexities of the subject prohibitory law in fixing the standard of specific criminal intent required for their prosecution. For instance, in *Cheek v.*

[22] *Supra* at note 13.
[23] *Supra* at note 22.
[24] *United States v. Balint,* 258 U.S. 250 (U.S. March 27, 1922); *Morissette v. United States,* 342 U.S. 246, 72 S. Ct. 240 (1952).
[25] *United States v. Allard,* 397 F. Supp. 429 (D. Mont. July 21, 1975).
[26] 355 U.S. 225, 78 S. Ct. 240 (1957).
[27] 2007 U.S. Dist. LEXIS 53245 (S.D.N.Y. 23 July 2007).

United States,[28] a tax evasion case, the US Supreme Court ruled that the State must prove that: (1) the law imposed a duty on the defendant; (2) he knew the duty required by the law; and (3) he voluntarily and intentionally violated that duty. The defendant, who was prosecuted for tax evasion and failing to file a return, believed that no tax was owing. He asserted his contention that wages are not income and that he was not a taxpayer within the meaning of the law. The US Supreme Court vacated defendant's conviction and remanded the case to the lower court for further proceedings. It held that in the factual determination of knowledge and belief, the defendant must be allowed to present evidence on good faith misunderstanding of the tax law, since such defense would negate the element of knowledge.

A reading of Canadian and Australian case law indicates that courts in these jurisdictions consider the aboriginal background of the accused in determining the criminality of their acts under prohibitive laws.

In *Yanner v. Eaton*,[29] the High Court of Australia upheld the dismissal of the charge against Murrandoo Yaner, a member of the Gunnamulla clan of the Gangalidda tribe of Aboriginal Australians, for taking fauna in the tribe's area without license. Yaner hunted and caught two (2) juvenile estuarine crocodiles in Cliffdale Creek in the Gulf of Carpentaria area in Queensland. He and other members of his clan ate some of the crocodile meat and froze the rest of the meat and the skins of the crocodiles. The High Court of Australia explained that the aborigines' relationship to their lands transcends the regular subjects of State regulations, *viz:*

> Native title rights and interests must be understood as what has been called "a perception of socially constituted fact" as well as "comprising various assortments of artificially defined jural right" And an important aspect of the socially constituted fact of native title rights and interests that is recognised by the common law is the spiritual, cultural and social connection with the land. **Regulating particular aspects of the usufructuary relationship with traditional land does not sever the connection of the Aboriginal peoples concerned with the land (whether or not prohibiting the exercise of that relationship altogether might, or might to some extent). That is, saying to a group of Aboriginal peoples, "You may not hunt or fish without a permit", does not sever their connection with the land concerned and does not deny the continued exercise of the rights and interests that Aboriginal law and custom recognises them as possessing.** (Emphasis ours)

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[28] 498 U.S. 192 (U.S. 8 January 1991).

[29] [1999] HCA 53, 07 October 1999, <http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/1999/53.html> (visited on 15 August 2020).

This acknowledgment of the aborigines' relationship with the land was reiterated in *Akiba v. Commonwealth of Australia*.[30] The High Court of Australia ruled that the Commonwealth Fisheries and the Queensland Fisheries laws, which both required licensing for fishing, did not extinguish the relationship of the aboriginal people to the land, nor extinguish the native title bundle of rights.

On the other hand, the Supreme Court of Canada's opinion in *R v. Sappier; R v. Gray*,[31] is enlightening. In that case, the Supreme Court of Canada affirmed the acquittal of three (3) members of the Maliseet and Mi'kmaq indigenous groups accused of possession and cutting of timber for domestic uses. In finding that wood was integral to the culture of indigenous tribes, the Supreme Court of Canada explained the necessity of adopting a liberal approach in the determination of the existence of a claimed aboriginal right. Despite the lack of direct evidence establishing a nexus between the harvest of wood to each of the tribe's customs and cultural practices, the Court nevertheless inferred that such aboriginal right to log trees exists because it was undertaken for the tribe's survival. It resolved that in order to establish an aboriginal right, a specific activity need not be shown to be a defining feature of a specific indigenous community. It suffices that the practice or act is integral to the distinctive culture of the aboriginal peoples.

The Court also explained that claimed aboriginal right must be viewed in light of modern-day circumstances so as to give effect to their Constitutional policy of protecting the distinctive cultures of aboriginal people, *viz*:

> Although the nature of the practice which founds the aboriginal right claim must be considered in the context of the pre-contact distinctive culture of the particular aboriginal community, **the nature of the right must be determined in light of present-day circumstances.** As McLachlin C.J. explained *in R. v. Marshall*, **"[l]ogical evolution means the same sort of activity, carried on in the modern economy by modern means."** It is the practice, along with its associated uses, which must be allowed to evolve. **The right to harvest wood for the construction of temporary shelters must be allowed to evolve into a right to harvest wood by modern means to be used in the construction of a modern dwelling.** Any other conclusion would freeze the right in its pre-contact form.
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> Before this Court, the Crown submitted that "[l]arge permanent dwellings, constructed from multidimensional wood, obtained by modern methods of forest extraction and milling of lumber, cannot resonate as a Maliseet aboriginal right, or as a proper application of the logical

[30] [2013] HCA 33, 07 August 2013, <http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2013/33.html> (visited 16 August 2020).

[31] 2006 SCC 54, < https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/2329/index.do?q=R.+v.+Sappier> (visited 16 August 2020).

> evolution principle", because they are not grounded in traditional Maliseet culture. I find this submission to be contrary to the established jurisprudence of this Court, which has consistently held that **ancestral rights may find modern form**: Mitchell, at para. 13. In Sparrow, Dickson C.J. explained that **"the phrase 'existing aboriginal rights' must be interpreted flexibly so as to permit their evolution over time."** Citing Professor Slattery, he stated that "the word 'existing' suggests that those rights are 'affirmed in a contemporary form rather than in their primeval simplicity and vigour.' In *Mitchell*, McLachlin C.J. drew a distinction between the particular aboriginal right, which is established at the moment of contact, and its expression, which evolves over time. L'Heureux-Dubé J. in dissent in Van der Peet emphasized that **"aboriginal rights must be permitted to maintain contemporary relevance in relation to the needs of the natives as their practices, traditions and customs change and evolve with the overall society in which they live."** If aboriginal rights are not permitted to evolve and take modern forms, then they will become utterly useless. Surely the Crown cannot be suggesting that the respondents, all of whom live on a reserve, would be limited to building wigwams. **If such were the case, the doctrine of aboriginal rights would truly be limited to recognizing and affirming a narrow subset of "anthropological curiosities," and our notion of aboriginality would be reduced to a small number of outdated stereotypes.** The cultures of the aboriginal peoples who occupied the lands now forming Canada prior to the arrival of the Europeans, and who did so while living in organized societies with their own distinctive ways of life, cannot be reduced to wigwams, baskets and canoes. (Emphasis ours)

The peculiar circumstances of this case require the same liberal approach. This Court simply cannot brush aside petitioners' cultural heritage in the determination of their criminal liability. Unlike the accused in *People v. De Gracia*, petitioners cannot be presumed to know the import and legal consequence of their act. Their circumstances, specifically their access to information, and their customs as members of a cultural minority, are substantial factors that distinguish them from the rest of the population.

Former Chief Justice Reynato Puno, in his Separate Opinion in *Cruz v. Secretary of Environment and Natural Resources*,[32] explained it aptly:

> Indigenous peoples share distinctive traits that set them apart from the Filipino mainstream. They are non-Christians. They live in less accessible, marginal, mostly upland areas. They have a system of self-government not dependent upon the laws of the central administration of the Republic of the Philippines. They follow ways of life and customs that are perceived as different from those of the rest of the population. The kind of response the indigenous peoples chose to deal with colonial threat worked well to their advantage by making it difficult for Western concepts and religion to erode their customs and traditions. The "infieles societies" which had become peripheral to colonial administration, represented, from a cultural perspective, a much older base of archipelagic culture. The

[32] G.R. No. 135385, 06 December 2000; 400 Phil. 904-1115 (2000).

> political systems were still structured on the patriarchal and kinship oriented arrangement of power and authority. The economic activities were governed by the concepts of an ancient communalism and mutual help. The social structure which emphasized division of labor and distinction of functions, not status, was maintained. The cultural styles and forms of life portraying the varieties of social courtesies and ecological adjustments were kept constantly vibrant.
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> Land is the central element of the indigenous peoples' existence. There is no traditional concept of permanent, individual, land ownership. Among the Igorots, ownership of land more accurately applies to the tribal right to use the land or to territorial control. The people are the secondary owners or stewards of the land and that if a member of the tribe ceases to work, he loses his claim of ownership, and the land reverts to the beings of the spirit world who are its true and primary owners. Under the concept of "trusteeship," the right to possess the land does not only belong to the present generation but the future ones as well.
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> Customary law on land rests on the traditional belief that no one owns the land except the gods and spirits, and that those who work the land are its mere stewards. Customary law has a strong preference for communal ownership, which could either be ownership by a group of individuals or families who are related by blood or by marriage, or ownership by residents of the same locality who may not be related by blood or marriage. The system of communal ownership under customary laws draws its meaning from the subsistence and highly collectivized mode of economic production.

As for the Mangyans, their challenges in availing learning facilities and accessing information are well documented.[33] The location of their settlements in the mountainous regions of Mindoro, though relatively close to the nation's capital, is not easily reached by convenient modes of transportation and communication. Further, the lack of financial resources discourages indigenous families to avail and/or sustain their children's education.[34] Certainly, by these circumstances alone, Mangyans cannot reasonably be compared to those in the lowlands in terms of worldview and behavior.

In the Mangyans' worldview, the forest is considered a common property of all the residents of their respective settlements. This means that

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[33] *Dong-Hwan Kwon*, "The Role of Protestant Mission and the Modernization among Mangyans in the Philippines", A Journal of Holiness Theology for Asia-Pacific Contexts, ASIA-PACIFIC NAZARENE THEOLOGICAL SEMINARY, Volume IX, Number 2, December 2013; See also *Cepeda, Cody,* "Mundong Mangyan: How Mindoro's Alangan Mangyan face land disputes, lack of teachers, child marriages", Published in inquirer.net on 27 November 2019, <https://newsinfo.inquirer.net/1194726/mundong-mangyan-how-mindoros-alangan-mangyan-face-land-disputes-lack-of-teachers-childhood-marriages> (visited 06 July 2020).

[34] *Ramschie, Cornelis,* The Life and Religious Beliefs of the Iraya Katutubo: Implications for Christian Mission, INFO Vol 11 No 2 (2008), <https://internationalforum.aiias.edu/images/vol11no02/cramschie.pdf> (visited 18 August 2020); *See also Caparoso, Jun, Evangelista, Luisito and Quiñones, Viktor,* The Use of Traditional Climate Knowledge by the Iraya Mangyans of Mindoro, (2018).

they can catch forest animals, gather wood, bamboo, nuts, and other wild plants in the forest without the permission of other residents.[35] They can generally hunt and eat animals in the forest, except those they consider inedible, such as phytons, snakes and large lizards.[36] They employ swiddens or the *kaingin* system to cultivate the land within their settlements.[37]

Based on the foregoing, to hold petitioners to the same standards for adjudging a violation of P.D. 705 as non-indigenous people would be to force upon them a belief system to which they do not subscribe.[38] The fact that petitioners finished up to Grade 4 of primary education neither negates their distinct way of life nor justifies lumping indigenous people (IP) with the rest of the Filipino people. Formal education and customary practices are not mutually exclusive, but is in fact, as some studies[39] note, co-exist in Mangyan communities as they thrive in the modern society. It may be opportune to consider that in indigenous communities, customs and cultural practices are normally transferred through oral tradition.[40] Hence, it is inaccurate to conclude that a few years in elementary school results to the total acculturation of IPs.

Moreover, the degree of petitioners' education should be viewed in conjunction with the crime with which they are charged. Compared to killing or any type of assault, cutting a tree without a license is not inherently or obviously wrong as to reasonably give rise to a presumption of knowledge. Taken together with petitioners' custom of communal ownership of natural resources within their ancestral domains, it is unfair to assume that petitioners were aware that they needed to secure a permit for the logging of one (1) tree intended for their community's use, and that failing to do so would result to their incarceration.

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35 *Miyamoto, Masaru*, "The Hanunoo-Mangyan: Society, Religion and Law Among A Mountain People of Mindoro Island", Vol. 2. pp. iii-240. (1988). <http://scholar.google.com.ph/scholar_url?url=https://minpaku.repo.nii.ac.jp/%3Faction%3Drepository_action_common_download%26item_id%3D3249%26item_no%3D1%26attribute_id%3D18%26file_no%3D1&hl=en&sa=X&scisig=AAGBfm2KqOucyQPHeh5miR8ho59QVIxnAw&nossl=1&oi=scholarr> (visited on 01 June 2020).

36 *Id.*

37 *Miyamoto, Masaru*, "Hanunoo-Mangyan Social World", Masaru Miyamoto, Vol. 2. pp. 147-195. (1979). <http://scholar.google.com.ph/scholar_url?url=https://minpaku.repo.nii.ac.jp/%3Faction%3Drepository_action_common_download%26item_id%3D3483%26item_no%3D1%26attribute_id%3D18%26file_no%3D1&hl=en&sa=X&scisig=AAGBfm3pY16BTL3FnBQw71itRsjPAC6MaA&nossl=1&oi=scholarr> (visited on 01 June 2020).

38 *See* Recognition of Aboriginal Customary Laws (ALRC Report 31). <https://www.alrc.gov.au/publication/recognition-of-aboriginal-customary-laws-alrc-report-31/18-aboriginal-customary-laws-and-substantive-criminal-liability/> (visited on 07 July 2020).

39 Bawagan, Aleli, *Customary Justice System Among the Iraya Mangyans of Mindoro*. 29th Annual Conference Ugnayang Pang-Aghamtao, Inc., 25-27 October 2007. Zamboanga (2007). <https://pssc.org.ph/wp-content/pssc-archives/Aghamtao/2009/06_Customary%20Justice%20System%20AMong%20the%20Iraya%20Mangyan's%20of%20Mindoro.pdf> (visited 11 September 2020).

40 Calara, Alvaro. *Ethnicity and Social Mobility in the Era of Globalization: The Journey of the SADAKI Mangyan-Alangans."* Philippine Sociological Review, vol. 59, 2011, pp. 87–107. JSTOR, <www.jstor.org/stable/43486371> (visited 11 September 2020).

It is for the same reason that petitioners' case should be viewed differently from *People v. Macatanda*[41] and *US v. Maqui*,[42] where the accused, a member of an ICC, was charged with cattle rustling. It is easy to understand that membership in an indigenous community, or one's lack of education, is irrelevant for purposes of determining their guilt because such acts are obviously illicit.

As already discussed, Mangyans perceive all the resources found in their ancestral domain to be communal. They are accustomed to using and enjoying these resources without asking permission, even from other tribes, much less from government functionaries with whom they do not normally interact. Moreover, by the location of their settlements, links to local government units or information sources are different from those residing in the lowlands.[43] As such, the Court may reasonably infer that petitioners are unaware of the prohibition set forth in Sec. 77 of P.D. 705.

Along with the Supreme Court of Canada's discussion in *R v. Sappier; R v. Gray*,[44] the fact that petitioners used a chainsaw in logging a single *dita* tree should not diminish the connection of the act to the Mangyans' way of life, nor should it be considered as a decisive fact supporting petitioners' conviction for the offense charged. The use of a chainsaw should simply be viewed as a practical means of fulfilling their community's needs using modern and available tools. It should not detract from the fact that it was carried out in obedience to their elders' directives, and consistent with their customs. Acts done within the context of an indigenous cultural community's belief system and way of life should be interpreted flexibly as to allow for modern means of expression.

The acquittal of petitioners do not aim to exempt their specific group not expressly excluded under P.D. 705. To clarify, I do not propose a blanket exemption of all members of ICCs from criminal liability. Certainly, such proposition would unduly impede criminal prosecution to the detriment of the State and the rest of the Filipino people. In voting for acquittal, I simply aim to recognize that the distinct circumstances of the case at bar call for its examination within a broader legal environment extraneous from the letter of the law. Similarly, I do not seek to nullify nor undermine the provision and policy behind P.D. 705. My opinion merely intends to make a determination on the limited issue presented in this petition, *viz*: whether under the circumstances, petitioners who are IPs, should be held criminally

[41] G.R. No. L-51368, 06 November 1981, 195 Phil. 604-612.

[42] 27 Phil. 97.

[43] Walpole, Peter W., and Dallay Annawi. *Where Are Indigenous Peoples Going?: Review of the Indigenous Peoples Rights Act 1997 Philippines,* Institute for Global Environmental Strategies, 2011, pp. 83–117, Critical Review Of Selected Forest-Related Regulatory Initiatives: Applying A Rights Perspective, <www.jstor.org/stable/resrep00846.10> (visited 13 September 2020).

[44] *Supra* at note 36.

liable under P.D. 705 for logging one (1) dita tree within their ancestral domain.

In this regard, I do not find that this Court's decisions in *Lim v. Gamosa*[45] and *PEZA v. Carantes*[46] are determinative of the issue presented in this petition. None of these cases deal with criminal liability arising from a prohibitory law regulating activities of indigenous people within their ancestral domains. At the risk of being repetitive, my vote is simply a result of my determination that the circumstances do not establish petitioners' intent to perpetrate the offense under Sec. 77 of P.D. 705. It is in no way a pronouncement that members of ICCs are absolutely exempted from securing permits to utilize resources. Neither should it be construed as a judicial sanction of small-scale logging or any form of commercial activity involving wood or timber, nor the use of indigenous people as conduits or accomplices to illegal logging operations. In any case, no evidence has been presented that indigenous people or ICCs have, in fact, been engaged or largely responsible in the problem of illegal logging here in the Philippines.

In my opinion, P.D. 705, which took effect in 1975, should be viewed under the prism of the 1987 Constitution which recognizes the right of ICCs. The noble objectives of P.D. 705 in protecting our forest lands should be considered in conjunction with the Constitution's mandate of recognizing our indigenous groups as integral to our nation's existence.[47] I submit that under our present Constitutional and legal regime, courts cannot summarily ignore allegations or factual circumstances that pertain to indigenous rights or traditions, but must instead carefully weigh and evaluate whether these are material to the resolution of the case. As rightfully noted by Senior Associate Justice Perlas-Bernabe, the enactment of various laws manifests the State's consent to the IPs' limited utilization of the natural resources within their ancestral lands and/or domains. It is my belief that such laws modify the meaning of intent to perpetrate and justify a solicitous approach in determining culpability under Sec. 77 of P.D. 705 if the accused is a member of an ICC.

This does not mean, however, that the Court should create a novel exempting circumstance in the prosecution of illegal logging activities. I am merely proposing that courts make a case-to-case determination whether an accused's ties to an ICC affects the prosecution's accusations or the defense of the accused. Simply put, courts should not ignore indigeneity in favor of absolute reliance to the traditional purpose of criminal prosecution, which are deterrence and retribution.[48] As in this case, if there is proof that the

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[45] G.R. No. 193964, 02 December 2015.

[46] G.R. No. 181274, 23 June 2010, 635 Phil. 541-554.

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

[48] *See Cunneen, Chris,* Sentencing, Punishment and Indigenous People in Australia, Journal of Global Indigeneity, 3(1), 2018,< https://ro.uow.edu.au/jgi/vol3/iss1/4>(visited on 07 July 2020); *See also*

logging of a tree is committed within the legitimate bounds of the exercise of an IP's rights and within their lands or domains, the act cannot be considered a violation of Sec. 77 of P.D. 705.

At any rate, petitioners' unique relations with their lands and the State's recognition of the same through various laws and international concessions put in doubt petitioners' culpability under P.D. 705. The fact that petitioners were apprehended while cutting a single tree, an act which is intrinsically tied to their life in the ICC and within their ancestral domain, puts in question the definition and coverage of the prohibition. I submit that such doubts should be resolved in favor of the accused. *In dubio pro reo*. When moral certainty as to culpability hangs in the balance, acquittal on reasonable doubt inevitably becomes a matter of right.[49]

In summation, **an acknowledgment of the Mangyan's unique way of life negates, or at the very least, casts doubt on petitioners' intent to perpetrate the prohibited act.** Taken with the fact that petitioners were caught cutting only one (1) *dita* tree at the time they were apprehended, and that it was done in obedience to the orders of their elders, it is clear that the cutting of the tree was a casual, incidental, and harmless act done within the context of their customary tradition. As the Court of last resort, We are called upon to look into the meaning and scope of the prohibition beyond the literal wording of the law.

In view thereof, I vote to **GRANT** the Petition and acquit the accused on reasonable doubt.

RODIL V. ZALAMEDA
Associate Justice

footnote 157 of *Samahan ng mga Progresibong Kabataan v. Quezon City,* G.R. No. 225442, 08 August 2017, 815 Phil. 1067-1174 (2017).

[49] *Zafra y Dechosa v. People*, G.R. No. 190749, 25 April 2012, 686 Phil. 1095-1110.

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