# Ruling

We acquit.

Section 2 of Rule 133 of the *Rules of Court* defines the standard of **proof beyond reasonable doubt**:

> "SECTION 2. Proof Beyond Reasonable Doubt. — In a criminal case, the defendant is entitled to an acquittal, unless his guilt is shown **beyond a reasonable doubt**. Proof **beyond a reasonable doubt** does **not mean** such a **degree of proof as, excluding possibility of error**, produces **absolute certainly. Moral certainty only is required**, or that degree of proof which **produces conviction in an unprejudiced mind**.

**In practice**, there is *proof beyond a reasonable doubt* where the judge can conclude: "All the above, as **established during trial, lead to no other conclusion than the commission of the crime** as prescribed in the law."[29] It has been explained:

> "With respect to those of a contrary view, it is difficult to think of a more accurate statement than that which defines **reasonable doubt as a doubt for which one can give a reason, so long as the reason given is logically connected to the evidence. An inability to give such a reason for the doubt one entertains is the first and most obvious indication that the doubt held may not be reasonable**. In this respect, I agree with the United States Court of Appeals, District of Columbia Circuit, in *U.S. v. Dale*, 991 F.2d 819 (*1993*) at p.853: "The instruction ... fairly convey[s] that the **requisite doubt** must be '**based on reason' as distinguished from fancy, whim or conjecture**."
> ....
>
> > "You will note that the Crown must establish the accused's guilt beyond a "reasonable doubt", not beyond "any doubt". A **reasonable doubt** is exactly what it says -a **doubt based on reason**- on the **logical processes of the mind**. It is **not a fanciful** or **speculative doubt, nor** is it a **doubt based upon sympathy or prejudice.** It is **the sort of doubt which, if you ask yourself "why do I doubt?"-you can**

> **assign a logical reason by way of an answer**.
>
> A **logical reason** in this context means **a reason connected either to the evidence itself**, including **any conflict you may find exists** after considering the evidence as a whole, or to **an absence of evidence** which in the circumstances of this case **you believe is essential to a conviction**.
>
> You must **not base your doubt** on the **proposition that nothing is certain or impossible or that anything is possible**. You are **not entitled** to set up **a standard of absolute certainty** and to say that the evidence does not measure up to that standard. In many things it is impossible to prove absolute certainty.[30]

***First Issue: Petitioners are Iraya-Mangyan IPs who are a publicly known ICC inhabiting areas within Oriental Mindoro***.

IPs in the Philippines inhabit the interiors and mountains of Luzon, Mindoro, Negros, Samar, Leyte, Palawan, Mindanao, and Sulu group of islands.[31] In ***Cruz v. Secretary of Natural Resources***,[32] the Court recognized the following ICCs residing in Region IV: Dumagats of Aurora, Rizal; Remontado of Aurora, Rizal, Quezon; **Alangan or *Mangyan*, Batangan, Buid or Buhid, Hanunuo, and *Iraya* of Oriental and Occidental Mindoro**; Tadyawan of Occidental Mindoro; Cuyonon, Palawanon, Tagbanua and Tao't bato of Palawan.[33]

In Oriental Mindoro, the **Iraya-Mangyan IPs** are publicly known to be residing and living in the mountains of the municipalities of Puerto Galera, San Teodoro, and Baco.[34]

The Information[35] stated that petitioners are residents of Barangay Baras, Baco, Oriental Mindoro. They supposedly logged a *dita* tree in Barangay Calangatan, San Teodoro, Oriental Mindoro. Notably, the municipalities of Baco and San Teodoro are areas where the Iraya-Mangyan IPs are publicly known to inhabit. They have continuously lived there since time immemorial.

The ***first evidence*** that petitioners are Iraya-Mangyan IPs is the testimony of Barangay Captain Aceveda of Baras, Baco, Oriental Mindoro. He testified in clear and categorical language that petitioners are Mangyans and the *dita* tree was grown on the land occupied by the Mangyans:

> "
> Q: Hours after the policemen and the employees of the DENR passed by what happened, Mr. Witness?

A: After more or less two to three hours later, they already returned ma'am.

Q: Did you notice anything unusual Mr. Witness?
A: Yes (,) ma'am.

Q: And what was that? ,
A: **They are accompanied by three (Mangyan) persons ma'am.**

Q: **And could you identify before this Court who these three (Mangyans) were?**
A: **Yes** (,) ma'am.

Q: Could you identify the three?
A: **Diosdado Sama, Bandy Masanglay (,) and Demetrio Masanglay** ma'am.

Q: What was the reason that they were taken under the custody by these policemen?
A: They cut down trees or lumbers ma'am.

Q: And where was the felled log cut Mr. Witness according to them?
A: **In the Sand owned by the Mangyans ma'am**.

Q; Where in particular, Mr. Witness?
A: **Sitio Matahimik, Barangay Baras, Baco ma'am**.[36]

As barangay captain of Barangay Baras, Baco, Oriental Mindoro where petitioners and the Iraya-Mangyan IPs live, Aceveda is competent to testify that **petitioners are Iraya-Mangyan IPs** and the ***dita* tree was grown and found in the land where these IPs have inhabited since time immemorial.** For he has personally known the people living within his barangay, including petitioners and other Iraya-Mangyan IPs. When asked about petitioners, he positively identified these persons by their names and confirmed they are Iraya-Mangyan IPs.[37] He is fully knowledgeable of the territory and the people of his barangay. He too is a member of the Iraya-Mangyan IPs. **These matters were not refuted by the prosecution**.

The ***second evidence*** that petitioners are indeed Iraya-Mangyan IPs is the fact that the NCIP - Legal Affairs Office has been representing them from the initiation of this case until the present.[38] Records show that the NCIP- Legal Affairs Office signed the motions and pleadings filed in petitioners' defense before the trial court, the Court of Appeals, and this Court, *viz*.: (1) Motion to Quash Information[39] dated July 31, 2007; (2) Motion for Reconsideration[40] of the adverse Decision dated September 08, 2010 of the RTC - Calapan City; (3) Supplement to the Motion for Reconsideration[41] dated January 17, 2009; (4) Motion for Reconsideration[42] dated July 06, 2015 of the adverse Decision of the Court of Appeals; (5) Petition for Review[43] dated May 16, 2014; and (6) Reply[44] dated March 02, 2017.

Under the *IPRA*, the NCIP is the lead government agency[45] for the protection, promotion, and preservation of IP/ICC identities and rights in the context of national unity.[46] As a result of its expertise, it has the primary jurisdiction to identify ICCs and IPs. Its Legal Affairs Office is mandated to represent and provide legal assistance to them:

> "Section 46 (g) *Legal Affairs Office* — There shall be a Legal Affairs Office which shall advice the NCIP on **all legal matters concerning ICCs/IPs and which shall be responsible for providing ICCs/IPs with legal assistance in litigation involving community interest**. It shall conduct preliminary investigation on the basis of complaints filed by the ICCs/IPs against a natural or juridical person believed to have violated ICCs/IPs rights. On the basis of its findings, it shall initiate the filing of appropriate legal or administrative action to the NCIP.[47]

In ***Unduran v. Aberasturi***,[48] the Court held that the NCIP may acquire jurisdiction over claims and disputes involving lands of ancestral domain only when they arise between or among parties belonging to the same ICCs or IPs. If the dispute includes parties who are non-ICCs or IPs, the regular courts shall have jurisdiction.

**Thus**, on the basis of the evidence on record, there is **no reason to doubt** that petitioners are Iraya-Mangyan IPs.

***Second Issue: The prosecution was not able to prove the guilt of petitioners for violation of Section 77, PD 705, as amended, beyond reasonable doubt.***

Section 77 of PD 705, as amended, punishes, among others, "[a]ny 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 ... shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code...."

This provision has evolved from the following iterations:

> "PD 705 (1975): "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 . . ."
>
> PD 1559 (1978) amending PD 705: "SEC. 68. Cutting, gathering and/or collecting timber or other products without license. — Any person shall cut, gather, collect, or remove timber or other forest products from any forest land, or timber from

> alienable or disposable public land or from private land **whose title has no limitation on the disposition of forest products found therein**, without any authority **under a license agreement, lease, license or permit**, shall be **punished with the penalty imposed under Arts. 309 and 310** of the Revised Penal Code..."
>
> EO 277 (1987) amending PD 705: "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...."

Section 7 of RA 7161 (1991) **repealed** what was **then** Section 77 of PD 705, as amended and **renumbered Section 68** of PD 705 **to Section 77** thereof and **replaced** the repealed **Section 77**. Note that the repealed Section 77 was a carry-over from Section 297 of the *National Internal Revenue Code of 1977*, as amended which was **then incorporated** into PD 705 as Section 77 by EO 273 (1987) and RA 7161. This repealed Section 77, formerly Section 297 of the *National Internal Revenue Code of 1977*, read:

> "Illegal cutting and removal of forest products. — [a] Any person who unlawfully cuts or gathers forest products in any forest lands without license or if under license, in violation of the terms hereof, shall, upon conviction for each act or omission, be fined for not less than ten thousand pesos but not more than one hundred thousand pesos or imprisoned for a term of not less than four years and one day but not more than six years, or both.

Construing the **original** iteration of **Section 77**, as **then Section 68** of the **original** version of PD 705, ***People v. CFI of Quezon (Branch VII)***[49] held that the elements of this offense are: 1) the accused cut, gathered, collected **or removed timber** or other forest products; 2) *the timber or other forest products cut, gathered, collected or removed* **belongs to** *the government or to any private individual*; and 3) the cutting, gathering, collecting or removing was **without any authority** granted by the State. Note that ***CFI of Quezon (Branch VII***) included the **ownership** of the timber or other forest products as the **second element** of this offense. In the same decision, however, the Court also **ruled** that -

> "Ownership is not an essential element of the offense as defined in Section [68] of P.D. No. 705. Thus, the failure of the information to allege the true owner of the forest products is not material, it was sufficient that it alleged that the taking was without any authority or license from the government.

Hence, we **do not consider** the **ownership** of subject timber or other forest products as an **element** of the offense under Section 68 of PD 705, now Section 77 of PD 705, as amended.

We **include one more element**: the timber or other forest product must have been cut, gathered, collected, or removed **from any forest land, or timber, from alienable or disposable public land or from private land**. This is **based on the language of the offense** as defined in either Section 68 or Section 77 which **expressly requires** the **source** of the timber or other forest products to be **from** these types of land.

***1. Is the dita tree cut and collected by petitioners a specie of timber?***

There is no issue that petitioners **did cut and collect a *dita* tree**. As a rule, we are bound by the factual findings of the trial court and the Court of Appeals. Petitioners themselves have not seriously challenged this factual finding. In fact, their sole witness confirmed that they had cut and collected the *dita* tree.

As for the nature of the *dita* tree, we rule that it constitutes timber. ***Merida v. People***[50] has explained that **timber** in PD 705 refers to:

> "... "**wood used for or suitable for building or for carpentry or joinery**." Indeed, tree saplings or tiny tree stems that are too small for use as posts, panelling, beams, tables, or chairs cannot be considered timber.... Undoubtedly, the narra tree petitioner felled and converted to lumber was "timber" fit "for building or for carpentry or joinery" and thus falls under the ambit of Section 68 of PD 705, as amended.

Here, the *dita* tree was **intended for constructing a communal toilet.** It therefore qualifies **beyond reasonable doubt** as **timber** pursuant to Section 77.

***2. Was the dita tree a specie of timber cut and collected from a forest land, an alienable or disposable public land, or a private land, as contemplated in Section 77 of PD 705, as amended?***

Section 3(d) of PD 705, as amended defines **forest lands** as including the public forest,[51] the permanent forest or forest reserves,[52] and forest reservationss.[53] Section 3(c) defines **alienable and disposable lands** as "those lands of the public domain which have been the subject of the present system of classification and declared as not needed for forest purposes."

**Section 3 (mm)** defines **private lands** indirectly as those lands with titled rights of ownership under existing laws, and **in the case of national minority, lands subject to rights of possession existing at the time a license is granted** under PD 705, **which possession may include places of abode and worship, burial grounds, and old clearings**, *but exclude* productive forests inclusive of logged-over areas, commercial forests, and established plantations of the forest trees and trees of economic values.[54]

As outlined, Section 77 requires **prior authority** for any of the acts of cutting, gathering, collecting, removing timber or other forest products **even from those lands possessed by IPs** falling **within the ambit** of the statute's definition of **private lands.**

Therefore, the **language** of Section 77 **incriminates** petitioners as they cut, gathered, collected, and removed **timber** from a *dita* tree from the land which they have called their own since time immemorial, which could either be a **forest land**, or an **alienable or disposable public land**, or a **private land**, as defined under PD 705, as amended, **without the requisite authority** pursuant to PD 705 's licensing regime.

Justice Caguioa firmly opines, however, that ancestral domains and lands are **outside the ambit of Section 77** as these are **neither** forest land, alienable or disposable public land, **nor** private land.

He is **correct** that **ancestral domains and lands are unique, different**, and **a class of their own**. They have been referred to repeatedly as ***sui generis* property**, which sets into motion the construct or paradigm for determining the existence, nature, and consequences of IP rights.[55]

Nonetheless, the **text** of Section 77, as amended is **very clear**. It does not exempt from its coverage ancestral domains and lands. Too, as Chief Justice Peralta aptly points out, the term "**private land**," which Section 77 **expressly** covers, **includes lands possessed by "national minorities**" such as their sacred and communal grounds. This term **should mean no other than** what we sensitively and correctly call today as the **IPs' ancestral domains and lands**.

To be sure, Section 77's reference to **forest lands** and even **alienable and disposable public lands** *could have also* **encompassed** ancestral domains and lands. This is **because** laws were **subsequently passed converting** some of the lands through the open, continuous, exclusive, and notorious occupation and cultivation of IPs (*then stereotypically referred to as members of the national cultural communities*) by themselves or through their ancestors **into** alienable and disposable lands of the public domain.[56]

**Three more things.**

***First***, Section 77 of PD 705 had been **amended a number of times** when IP rights were **burgeoning as an affirmative action component** - in 1987 (EO 277) and then again in 1991 (RA 7161), **but never** did the authorities **change** the **explicit coverage** of the **text** of **Section 77**. There was **not even an attempt** to **clarify** that *ancestral domains, and lands are beyond Section 77's contemplation*, which the authorities could have easily done so.

***Second***, Section 77 was the **product of a less-than enlightened age.** The era of PD 705 even as amended **did not politely** call IP lands and communities the IPs' ancestral domains or ancestral lands but **tribal grounds** or **archaeological areas** of, or **lands occupied and cultivated by, members of the national cultural communities**, or **public or communal forests**. Section 77 was born and nurtured at a time when IPs were referred to as "**national minorities**" and the enlightened path then was to achieve their **redemption** through **assimilation** into the cultural bourgeoisie of the majority.

Justice Leonen's ***Ha Datu Tawahig v. Lapinid***[57] eloquently narrates this sorry stage in our legal history. So does Justice Lopez whose citations refer to our case law when we still called IPs **cultural minorities** whose status as such is derisively and condescendingly seen as a mitigating circumstance, or the IPs of the Cordilleras as uncivilized Igorots whose alleged backwardness was patronizingly used to lessen the criminal punishment meted. As observed by Justice Kapunan in ***Cruz v. Secretary of Natural Resources***,[58] "Philippine legal history, however, has not been kind to the indigenous peoples, characterized them as 'uncivilized,' 'backward people,' with 'barbarous practices' and 'a low order of intelligence'."

This *was* the **construct** that permeated either the original or amended iterations of Section 77, This construct **rendered it unlikely**, to say the least, **the exclusion** from criminalization of the IPs or ICCs' cultural and customary practices within their ancestral domains and lands.

This context means that **Section 77 could not have *intended* to exclude as its language does not exclude** ancestral domains and lands.

The **rise of aboriginal or IP law and jurisprudence** has **not** come about smoothly or even peacefully. This was because of the **need to correspond to traditional legal conceptions of property rights to receive the law's protection**.[59] Indeed, prior to the *IPRA*, ancestral domains and lands were conceived in this manner:

> "It seems to be common ground that the ownership of the lands was "tribal" or "communal," but what precisely that, means remains to be ascertained. In any case it was necessary that the argument should go the length of showing that **the rights**, whatever they exactly were, **belonged to the category of rights of private property**.[60]

This statement clearly exudes the **bias of a colonialist regime**. The notion that land ownership existed **only where it adhered to civil or common law concepts** implied their acceptance **at the expense of** indigenous principles of ownership. While indigenous laws were not completely rejected under this formulation, **only those forms of ownership which shared sufficient similarity** with the civil or common law were deemed capable of securing legal protection.

The original and amended versions of the current Section 77 were enacted under **this exact legal framework**. Hence, Section 77 **could not have been so enlightened and progressive** as to accord utmost respect to IP rights by excluding them from its criminal prohibition. It was **only later** that **we were enlightened** that the **proper method** of ascertaining IP rights necessitated a study of particular IP customs and laws. Under this test, IP rights and title are best understood by Iraya-Mangyan IPs **considering indigenous history and patterns of cultural practices and land usage**, rather than importing the preconceived notions of property rights under civil or common law. This enlightened view was **not** the **text of**, let alone, the **intent behind** Section 77.

***Third***, as held in ***CFI of Quezon*** (***Branch VII***), the **intent** behind the original iteration of Section 77 as then Section 68 **rejected as an element of this offense**, the **ownership** of **the land** from which the **timber or other forest products** were cut, removed, gathered, or collected, or the timber or other forest products themselves as accessories of the land. This means that Section 68

or even Section 77 **covers any type of land** so long as timber or other forest products were taken therefrom, **regardless of an accused's property interests in the land**, when the **taking** was done **without any authority granted by the State**. It may also be inferred that **mere ownership** of the land does **not** amount to an **authority granted by the State** to justify the cutting, collection, removal, or gathering of timber or other forest products. As elucidated in ***CFI of Quezon (Branch VII)***:

> "The **failure of the information to allege** that the **logs taken** were **owned by the state is not fatal**. It should be noted that the logs subject of the complaint were taken not from a public forest but from a private woodland registered in the name of complainant's deceased father, Macario Prudente. The fact that **only the state can grant a license agreement, license or lease does not make the state the owner of all the logs and timber products** produced in the Philippines **including those produced in private woodlands**. The case of *Santiago v. Basilan Company*, G.R. No. L-15532, October 31, 1963, 9 SCRA 349, clarified the matter on **ownership of timber in private lands**, This Court held therein:
>
> "The defendant has appealed, claiming that it should not be held liable to the plaintiff because the timber which it cut and gathered on the land in question belongs to the government and not to the plaintiff, **the latter having failed to comply with a requirement of the law with respect to his property**.
>
> "The provision of law referred to by appellant is a section of the Revised Administrative Code, as amended, which reads:
>
> 'SEC. 1829. Registration of title to private forest land. — **Every private owner of land containing timber, firewood and other minor forest products shall register his title to the same** with the Director of Forestry. A list of such owners, with a statement of the boundaries of their property, shall be furnished by said Director to the Collector of Internal Revenue, and the same shall be supplemented from time to time as occasion may require.'
>
> 'Upon application of the Director of Forestry the fiscal of the province in which any such land lies shall render assistance in the examination of the title thereof with a view to its registration in the Bureau of Forestry.'
>
> "In the above provision of law, there is **no statement to the effect that noncompliance with the requirement would divest the owner of the land of his rights thereof and that said rights of ownership would be transferred to the government**. Of course, the **land which had been registered and titled in the name of the plaintiff** under that Land Registration Act **could no longer be the object of a forester license** issued by the Director of Forestry because **ownership of said land includes also ownership of everything found on its surface** (Art. 437, New Civil Code).

> "Obviously, the **purpose of the registration** required in section 1829 of the Administrative Code is **to exempt the title owner of the land from the payment of forestry charges** as provided for under Section 266 of the National Internal Revenue Code, to wit:
>
> 'Charges collective on forest products cut, gathered and removed from **unregistered private lands**. — The charges above prescribed shall be collected on all **forest products cut, gathered and removed from any private land the title to which is not registered** with the Director of Forestry as required by the Forest Law; Provided, however, that **in the absence of such registration, the owner who desires to cut, gather and remove timber and other forest products from such land shall secure a license from the Director of Forestry** Law and Regulations. The **cutting, gathering and removing of timber and the other forest products from said private lands without license shall be considered as unlawful cutting**, gathering and removing of forest products from public forests and **shall be subject to the charges** prescribed in such cases in this chapter.'
>
> "xxx xxx xxx.
>
> "On the other hand, while it is admitted that the **plaintiff has failed to register the timber in his land as a private woodland** in accordance with the oft-repeated provision of the Revised Administrative Code, he **still retained his rights of ownership, among which are his rights to the fruits of the land and to exclude** any person from the enjoyment and disposal thereof (Art. 429. New Civil Code) — the very rights violated by the defendant Basilan Lumber Company."
>
> **While it is only the state which can grant a license or authority to cut, gather, collect or remove forest products it does not follow that all forest products belong to the state**. In the just cited case, **private ownership of forest products grown in private lands is retained under the principle in civil law that ownership of the land includes everything found on its surface.**
>
> **Ownership is not an essential element of the offense as defined in Section**[68] **of P.D. No. 705. Thus, the failure of the information to allege the true owner of the forest products is not material, it was sufficient that it alleged that the taking was without any authority or license from the government**.

The concept of **ownership adverted** to in ***CFI of Quezon (Branch VII)*** is the civilist notion of ownership, that is, the one defined and expounded in our *Civil Code.*

We **hold** that this ruling in ***CFI of Quezon (Branch VII)*** **remains true** to the **amended** iterations

of Section 68, now Section 77. **Ownership** of the land from which the timber or other forest products are taken is **neither** an element of the offense nor a defense to this offense — so long as **timber** or other forest products were **cut, collected**, gathered, or removed **from a forest land, an alienable or disposable public land, or private land** as defined in PD 705, as amended, ***without any authority*** granted by the State. As well, **ownership *per se*** of either the land or the timber or other forest products, as this right is understood in our Civil Code, **does not amount** to an **authority** granted by the State **to justify** the otherwise forbidden acts.

The **reason** for this ruling is the **relevant part** of Section 68 that **has remained unchanged** in its present version - the *actus reus* ("cut, gather, collect, remove"), the object of the *actus reus* (timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land), and the penalties for this offense ("shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code...."). The role of **ownership** in the determination of criminal liability for this offense **has not evolved**. In fact, if one were to examine the original Section 68, **ownership ought** to have been an **essential element** because **Section 68** was **then expressly treated** as a **specie of qualified theft**, a felony where ownership is an essential element.[61] Nonetheless, despite this penal typology of Section 68 then, ownership **was not considered** an element of this offense. With more reason, there having been **no change** in the wording of the law, on one hand, and there having been a **shift** in its **classification** into an offense **distinct from qualified theft**, on the other, **ownership** must **continue** to be a **non-essential consideration** in obtaining a conviction for this offense.

Another reason lies in the **purpose** that Section 68 and the entirety of PD 705, as amended seek to achieve. As stated in the **preamble** of PD 705, as amended:

> "WHEREAS, proper classification, management and utilization of the lands of the public domain to maximize their productivity to meet the demands of our increasing population is urgently needed;
>
> WHEREAS, to achieve the above purpose, it is necessary to reassess the multiple uses of forest lands and resources before allowing any utilization thereof to optimize the benefits that can be derived therefrom;
>
> WHEREAS, it is also imperative to place emphasis not only on the utilization thereof but more so on the protection, rehabilitation and development of forest lands, in order to ensure the continuity of their productive condition;
>
> WHEREAS, the present laws and regulations governing forest lands are not responsive enough to support re-oriented government programs, projects and efforts on the proper classification and delimitation of the lands of the public domain, and the management, utilization, protection, rehabilitation, and development of forest lands....

Verily, State **regulation** of the utilization of forest lands **cuts above** ownership rights. This is in line with the **police power** of the State and its obligation to the entire nation to promote, protect,

and defend its **right to a healthy and clean environment and ecology** as a third generation collective right.[62]

***Maynilad Water Services Inc. v. Secretary of the Department of Environment and Natural Resources***[63] has confirmed the **public trust doctrine** that permeates the State's obligation *vis-a-vis* all natural resources such as water, and **by logical extension, timber and other forest products:**

> "
> The **vastness of this patrimony precludes the State from managing the same entirely by itself**. In the interest of quality and efficiency, **it thus outsources assistance from private entities, but this must be delimited and controlled for the protection of the general welfare**. Then comes into relevance **police power**, one of the inherent powers of the State. Police power is described in *Gerochi v. Department of Energy*.
>
> [P]olice power is the power of the state to promote public welfare by restraining and regulating the use of liberty and property. It is the most pervasive, the least limitable, and the most demanding of the three fundamental powers of the State. The justification is found in the Latin *maxim salus populi est suprema lex* (the welfare of the people is the supreme law) and *sic utere tuo ui alienum non laedas* (so use your property as not to injure the property of others). **As an inherent attribute of sovereignty which virtually extends to all public needs, police power grants a wide panoply of instruments through which the State, as *parens patriae*, gives effect to a host of its regulatory powers. We have held that the power to "regulate" means the power to protect, foster, promote, preserve, and control, with due regard for the interests, first and foremost, of the public, then of the utility and of its patrons.**
>
> **Hand-in-hand with police power in the promotion of general welfare is the doctrine of *parens patriae***. It focuses on the **role of the state as a "sovereign" and expresses the inherent power and authority of the state to provide protection** of the person and property of a person *non sui juris*. Under the doctrine, **the state has the sovereign power of guardianship over persons of disability, and in the execution of the doctrine the legislature is possessed of inherent power to provide protection to persons *non sui juris* and to make and enforce rules and regulations as it deems proper for the management of their property**. *Parens patriae* means "father of his country," and **refers to the State as a last-ditch provider of protection to those unable to care and fend for themselves**. It can be said that Filipino consumers have become such persons of disability deserving protection by the State, as their welfare are being increasingly downplayed, endangered, and overwhelmed by business pursuits.
>
> **While the Regalian doctrine is state ownership over natural resources,**

**police power is state regulation through legislation, and *parens patriae* is the default state responsibility to look after the defenseless**, there remains a limbo on a **flexible state policy bringing these doctrines into a cohesive whole, enshrining the objects of public interest, and backing the security of the people, rights, and resources from general neglect, private greed, and even from the own excesses of the State**. We fill this void through the P**ublic Trust Doctrine**.

The Public Trust Doctrine, while derived from English common law and American jurisprudence, has firm Constitutional and statutory moorings in our jurisdiction. The doctrine speaks of an imposed duty upon the State and its representative of continuing supervision over the taking and use of appropriated water. Thus, "**[p]arties who acquired rights in trust property [only hold] these rights subject to the trust and, therefore, could assert no vested right to use those rights in a manner harmful to the trust.**" In *National Audubon Society v. Superior Court of Alpine County*, a California Supreme Court decision, it worded the doctrine as that which —

....

Academic literature further imparts that "**[p]art of this consciousness involves restoring the view of public and state ownership of certain natural resources that benefit all. [. . .]" The "doctrine further holds that certain natural resources belong to all and cannot be privately owned or controlled because of their inherent importance to each individual and society as a whole**. A clear declaration of public ownership, the doctrine reaffirms **the superiority of public rights over private rights for critical resources.** It impresses upon **states the affirmative duties of a trustee to manage these natural resources for the benefit of present and future generations** and embodies key principles of environmental protection: stewardship, communal responsibility, and sustainability."

**In this framework, a relationship is formed — "the [s]tate is the trustee, which manages specific natural resources — the trust principal — for the trust principal — for the benefit of the current and future generations — the beneficiaries.**" "[T]he [S]tate has an **affirmative duty to take the public trust into account in the planning and allocation** of water resources, and to protect public trust uses whenever feasible." But with the birth of privatization of many basic utilities, including the supply of water, this has proved to be quite challenging. The State is in a continuing battle against lurking evils that has afflicted even itself, such as the excessive pursuit of profit rather than purely the public's interest.

These **exigencies forced** the **public trust doctrine** to **evolve from a mere principle** to a **resource management term** and **tool flexible** enough **to**

> **adapt to changing social priorities** and **address** the **correlative and consequent dangers** thereof. The **public** is regarded as the **beneficial owner of trust resources**, and **courts can enforce** the **public trust doctrine even against the government itself.**

In the exercise of its police power regulation, "the State **restricts the use of private property**, but none of the property interests in the bundle of rights which constitute ownership is appropriated for use by or for the benefit of the public. **Use of the property by the owner was limited**, but no aspect of the property is used by or for the public. The **deprivation of use can in fact be total** and it will not constitute compensable taking if nobody else acquires use of the property or any interest therein."[64]

**To conclude**, the *dita* tree, as a specie of timber, was cut and collected **beyond reasonable doubt** from a **private land**, as contemplated in Section 77 of PD 705, as amended, or at the very least, a **forest land** or an **alienable or disposable public land** converted from ancestral lands, is covered, too, by PD 705, as amended. This notwithstanding that the land is also petitioners' ancestral domain or land which they own ***sui generis***.

> ***"3. Was the dita tree cut and collected without authority granted by the State?***

There is, however, **reasonable doubt** that the *dita* tree was cut and collected **without any authority** granted by the State.

It is a general principle in law that in ***malum prohibitum*** case, **good faith or motive is not a defense** because the law **punishes the prohibited act** itself. The penal clause of Section 77 of PD 705, as amended punishes the cutting, collecting, or removing of timber or other forest products **only when** any of these acts is done **without lawful authority** from the State.

In ***Saguin v. People***,[65] the prohibited act of non-remittance of Pag-Ibig contributions is punishable **only when** this act was done "**without lawful cause**" or "with fraudulent intent." According to this case law, **lawful cause** may result from a **confusing** state of affairs engendered by **new legal developments** that **re-ordered** the way things had been previously done. In ***Saguin***, the **cause** of the **confusion** was the **devolution** of some powers in the health sector to the local governments. The **devolution** was ruled as a "valid justification" constituting the "lawful cause" for the inability of the accused to remit the Pag-Ibig contributions. The devolution gave rise to **reasonable doubt** as to the **existence** of the offense's element of **lack of lawful cause**.

This doctrine in ***Saguin*** is reiterated in ***Matalam v. People***.[66] ***Matalam*** affirmed the doctrine that when an act is ***malum prohibitum***, "[i]t is the **commission of that act** as defined by the law, and **not the character or effect thereof**, that determines whether or not the provision has been violated." Citing ***ABS-CBN Corporation v. Gozon***[67] ***Matalam*** **clarified** what this doctrine entails by **distinguishing** between the **intent** requirements of a ***malum in se*** felony and a ***malum prohibitum*** offense:

> “
> The general rule is that acts punished under a special law are ***malum prohibitum***. "An act which is declared *malum prohibitum,* **malice** or ***criminal*** **intent** is **completely immaterial."**
>
> In contrast, crimes ***mala in se*** concern inherently immoral acts:
>
> "Implicit in the concept of ***mala in se*** is that of ***mens rea***." ***Mens*** rea is defined as "the **nonphysical element** which, combined with the act of the accused, makes up the crime charged. Most frequently it is **the criminal intent, or the guilty mind**[.]"
>
> **Crimes *mala in se* presuppose** that the **person who did the felonious act had *criminal* intent** to do so, while **crimes *mala prohibita*** do **not require knowledge** or **criminal intent:**
>
> In the case of ***mala in se*** it is necessary, to constitute a punishable offense, for the person doing the act to **have *knowledge* of the *nature* of his act** and to **have a criminal intent**; in the case of ***mala prohibita***, unless such words as "knowingly" and "willfully" are contained in the statute, **neither knowledge nor *criminal* intent is necessary.** In other words, **a person morally quite innocent and with every *intention of being a law-abiding citizen* becomes a criminal**, and liable to criminal penalties, **if he does an act prohibited by these statutes.**
>
> Hence, "**[i]ntent *to commit the crime*** and **intent *to perpetrate the act*** must be distinguished. A person may **not have consciously intended 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** [.]" When an act is prohibited by a special law, it is considered injurious to public welfare, and the performance of the prohibited act is the crime itself.
>
> **Volition, or intent to commit the act, is different from criminal intent. Volition or voluntariness** refers to ***knowledge* of the *act being done*** [in contrast to **knowledge of the nature of his act**]. On the other hand, **criminal intent** — which is **different from motive**, or the **moving power for the commission of the crime** — refers to the **state of mind beyond voluntariness**. It is **this intent** that is being **punished** by crimes ***mala in se***.

***Matalam*** recognized **that** the **character** or **effect** of the commission of the prohibited act, which is **not required** in proving a ***malum prohibitum*** case, is **different from** the **intent** and **volition to commit** the act which itself is prohibited if done **without lawful cause**. Justice Zalameda elucidates:

> "
> The *malum prohibitum* nature of an offense, however, does not automatically result in a conviction. The prosecution must still establish that the accused had intent to perpetrate the act.
>
> Intent to perpetrate has been associated with the actor's volition, or intent to commit the act. Volition or voluntariness refers to knowledge of the act being done. 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.
>
> . . . .
>
> **[I]t 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 the same with result to absurd consequences. Further, as in *People v. De Gracia* and *Mendoza v. People*, temporary, incidental, casual, or harmless commission of prohibited acts were considered as an indication of the absence of an intent to perpetrate the offense**. (Emphasis in the original)

Here, as in ***Saguin***, as reiterated in ***Matalam***, there was **confusion** arising from the **new legal developments**, particularly, the recognition of the **indigenous peoples' (IPs) human rights normative system,** in our country. To paraphrase and import the words used in ***Saguin***, while *doubtless there was* voluntary and knowing act of cutting, removing, collecting, or harvesting of timber, we nonetheless consider the **reasonable doubt** engendered by the **new normative system** that the act was **done without State authority**, as required by Section 77 of PD 705, as amended.

The **confusion** and the resulting **reasonable doubt** on whether petitioners were authorized by the State **have surfaced** from the following circumstances:

**One**. In light of the **amendments to Section 77**, the **lawful authority** seems to be *probably* **more expansive** now than it previously was. Presently, the **authority** could be **reasonably** interpreted as being **inclusive** of **other modes of authority** such as the **exercise of IP rights**. As observed by Senior Associate Justice Perlas-Bernabe:

> "
> 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*." 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 should be read in light of the new legal regime which gives significant emphasis on the State's protection of our IP's 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 IP's rights within their ancestral domains. (Emphasis in the original)

The evolution of the penal provision shows that **authority** has actually become **more expansive and inclusive**. As presently couched, it no longer qualifies the "authority" required **but includes ANY authority.** As sharply noted by Senior Associate Justice Perlas-Bernabe, the phrasing of the law **has evolved from** requiring a "permit **from the Director**" in 1974 under PD 389, **to** a mere "license agreement, lease, license or permit" under PDs 705 and 1559 from 1975 to 1987, and to "**any** authority" from 1987 thereafter. Without any qualifier, the word "**authority" is now inclusive** of forms other than permits or licenses from the DENR. This doubt is **reasonable** as it arose from a **principled reading** of the amendments to Section 77, and this **doubt** ought to be **construed in petitioners' favor.**

Justice Caguioa vigorously posits as well that "[considering the foregoing, I have, from the very beginning, and still am, of the view that the 'authority' contemplated in PD 705, as amended, should no longer be limited to those granted by the DENR. Rather, such authority may also be found in other sources, such as the IPRA." He cogently reasons out:

> "To have a strict interpretation of the term "authority" under Sec. 77 of P.D. 705 despite the clear evolution of its text would amount to construing a penal law ***strictly against*** the accused, which cannot be countenanced. To stress, "[o]nly those persons, offenses, and penalties, clearly included, beyond any reasonable doubt, will be considered within the statute's operation. They must come clearly within both the spirit and the letter of the statute, and where there is any reasonable doubt, it must be resolved in favor of the person accused of violating the statute; that is, all questions in doubt will be resolved in favor of those from whom the penalty is sought."
>
> More importantly, to construe the word "authority" in Sec. 77, P.D. 705 as excluding the rights of ICCs/IPs already recognized in the IPRA would unduly undermine both the text and the purpose of this novel piece of legislation and significantly narrow down the rights recognized therein. (Emphasis in the original)

**Two**. It is an admitted fact that petitioners **relied upon** their elders, the **non-government organization** that was helping them, and **the NCIP**, that **they supposedly possessed the State authority** to cut and collect the *dita* tree as IPs for their indigenous community's communal toilet. Thus, **subjectively**,[68] their **intent** and **volition to commit** the **prohibited** act, that is **without lawful authority**, was rendered **reasonably doubtful** by these pieces of evidence showing their reliance upon these separate assurances of a State authority. As Justice Zalameda explains:

> "
> **The peculiar circumstances of this case require the same liberal approach**. The 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.
>
> . . . .
>
> As for the Mangyans, their challenges in availing learning facilities and accessing information are well documented. 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. Certainly, by these circumstances alone, Mangyans cannot reasonably be compared to those in the lowlands in terms of world view and behavior.
>
> In the Mangyans' worldview, the forest is considered as common property of all the residents of their respective settlements. This means that they can catch forest animals, gather wood, bamboo, nuts, and other wild plants in the forest without the permission of other residents. They can generally hunt and eat animals in the forest, except those they consider inedible, such as pythons, snakes and large lizards. They employ swiddens or the kaingin system to cultivate the land within their settlements.
>
> Based on the foregoing, to hold petitioners to the same standards for adjudging a violation of PD 705 as non-indigenous peoples would be to force upon them a belief system to which they do not subscribe. The fact that petitioners finished up to Grade 4 of primary education does not negate their distinct way of life nor justifies lumping IPs with the rest of the Filipino people. Formal education and customary practices are not mutually exclusive, but is in fact, as some studies 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. Hence, it is

> inaccurate to conclude that a few years in elementary school results to IP's total acculturation.
>
> 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. As such, the Court may reasonably infer that petitioners are unaware of the prohibition set forth in Sec. 77 of P.D. No. 705.
>
> To my mind, an acknowledgment of the Mangyan's unique way of life negates any finding on the 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.
>
> . . . .
>
> 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 indigenous cultural communities. The noble objectives of P.D. 705 in protecting our forest lands should be viewed in conjunction with the Constitution's mandate of recognizing our indigenous groups as integral to our nation's existence. I submit that under our present Constitutional 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.
>
> This does not mean, however, that the Court is creating a novel exempting circumstance in criminal prosecutions. It merely behooves the courts to make a case-to-case determination whether an accused's ties to an indigenous cultural community affects the prosecution's accusations or the defense of the accused. Simply put, the courts should not ignore indigeneity in favor of absolute reliance to the traditional purpose of criminal prosecution, which are deterrence and retribution.
>
> In sum, the peculiar circumstances of this case compel me to take petitioners' side. I am convinced that petitioners' intent to perpetrate the offense has not been established by the prosecution with moral certainty. For this reason, I vote for petitioners' acquittal.

**Objectively**,[69] their reliance **cannot be faulted** because IP rights have long been **recognized**

**at different levels** of our legal system - the ***Constitution***, the **statutes** like *IPRA* and a host of others like the ones mentioned by Justice Leonen in his *Opinion*, the sundry **administrative regulations** (one of which Chief Justice Peralta and Justice Caguioa have taken pains to outline) which seek to reconcile the regalian doctrine and the civilist concept of ownership with the indigenous peoples' ***sui generis*** ownership of ancestral domains and lands, the **international covenants** like the *United Nations Declaration on the Rights of Indigenous Peoples*, of which our country is a signatory, and **Philippine** and **international jurisprudence** which identifies the forms and contents of IP rights.

We hasten to add though that this **recognition** has **not** transformed into a **definitive** and **categorical** rule of law on its **impact** as a **defense** in criminal cases against IPs arising from the exercise of their IP rights. The ensuing **unfortunate confusion** as to true and inescapable merits of these rights in criminal cases **justifies** the claim that petitioners' guilt for this ***malum prohibitum*** offense is **reasonably doubtful**.

As succinctly tackled by Justice Caguioa in his opinion: "In any case, and as aptly noted by the Chief Justice's dissent, doubts have been cast as to the applicability of the IPRA to the present case, and since such doubt is on whether or not the petitioners were well-within their rights when they cut the *dita* tree, such doubt must be resolved to stay the Court's hand from affirming their conviction." He further opines that the invocation of IP rights in the case at bar has "risen to the heights of contested constitutional interpretations...." While we do not share Justice Caguioa's opinion in full, we agree with him at least that there is **reasonable doubt** as regards the accused' guilt of the offense charged. Thus:

> "On this note, it may be well to remember that the case of Cruz which dealt with the constitutionality of the provisions of the IPRA was decided by an equally divided Court. This only goes to show that there are still nuances concerning the rights of IPs within their ancestral land and domain that are very much open to varying interpretations. Prescinding from this jurisprudential history, perhaps the instant case may not provide the most sufficient and adequate venue to resolve the issues brought about by this novel piece of legislation. It would be the height of unfairness to burden the instant case against petitioners with the need to resolve the intricate Constitutional matters brought about by their mere membership in the IP community especially since a criminal case, being personal in nature, affects their liberty as the accused.
>
> The members of the Court may argue one way or the other, but no length of legal debate will remove from the fact that this case is still about two men who acted pursuant to precisely the kind of cultural choice and community-based environmental agency that they believe IPRA contemplated they had the freedom to exercise. The petitioners hang their liberty on the question of whether or not IPRA, *vis-a-vis* forestry laws, has failed or delivered on its fundamental promise. **That the Court cannot categorically either affirm or negate their belief, only casts reasonable doubt not only as to whether or not they are guilty of an offense, but whether or not there was even an offense to speak of.** At most, this doubt only further burdens the fate of

> the petitioners with constitutional questions, the answers to which must await a future, more suitable opportunity.
>
> **At the very least, this doubt 'must merit their acquittal**.
> (Emphases in the original)

To be precise, the **IP rights** we are alluding to are the rights to maintain their **cultural integrity** and to benefit from the **economic benefits** of their ancestral domains and lands, **provided** the **exercise** of these rights is **consistent with protecting** and **promoting equal rights of the future generations** of IPs. To stress, it is the **confusion** arising from the **novelty** of the **content, reach**, and **limitation** of the **exercise of these rights** by the accused in **criminal cases** which **justifies** their acquittal for their **otherwise prohibited** act.

---

Revision #1
Created 31 May 2025 06:02:34 by MaharlikanWatchman
Updated 31 May 2025 06:03:42 by MaharlikanWatchman