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that it was physically impossible for him to have been at the scene of the crime.[40] Where there is even the least chance for the accused to be present at the crime scene, the defense of *alibi* seldom will hold water.[41] The Court finds incredible the testimony of Vicitacion Villarazo that she was washing clothes in front of the house of accused-appellant from 11:30 p.m. to 5:00 a.m. and that she never saw him leave the house. It would not be possible for her to notice everything that was going on inside the house of accused-appellant especially since she was busy with her own chore. Accused-appellant could have easily left the house without her knowing it.

The Court notes that the trial court only awarded an indemnity of ₱50,000.00 to the victim. In addition to indemnity, moral damages should also be awarded since the rape victim's injuryis inherently concomitant to and results from the odiousness of the crime.[42]

WHEREFORE, the decision of the Regional Trial Court of Pasig City, Branch 163, is AFFIRMED with MODIFICATION that in addition, accused is ordered to pay the victim the amount of ₱50,000.00 as moral damages.

Davide, Jr., C.J. (Chairman), Puno, and *Ynares-Santiago, JJ,* concur.

THIRD DIVISION

[G.R. No. 139674. March 6, 2002]

NICHIMEN CORPORATION (MANILA BRANCH), *petitioner, vs.* **THE HON. COURT OF APPEALS,**

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[40] *People vs. Rabang, Jr.,* 315 SCRA 451 (1999).

[41] *People vs. Santiago,* 319 SCRA 644 (1999).

[42] *People vs. Pecaco, Jr.,* 348 SCRA 95 (2000).

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THE HON. COURT OF TAX APPEALS AND THE HONORABLE COMMISSIONER OF INTERNAL REVENUE, *respondents.*

SYNOPSIS

Petitioner is a resident foreign corporation organized and existing under the laws of Japan and authorized to do business in the Philippines. Petitioner received from the Commissioner of Internal Revenue a demand letter with an accompanying notice assessing it for deficiency income tax, fixed tax, expanded withholding tax, and percentage tax. The Commissioner withdrew the assessment for fixed tax, but sustained the other assessments. Petitioner finally agreed to pay in full its deficiency income tax, expanded withholding tax, and withholding tax on compensation. Petitioner, however, continued to oppose the assessment for deficiency percentage tax. Subsequently, it filed with the Court of Tax Appeals a petition for review, alleging that the subject assessment was devoid of legal basis. Respondent Commissioner maintained that the assessment for deficiency percentage tax was based on the findings of the Bureau of Internal Revenue that there were receipts showing that certain sales entered into between Philippine customers and foreign manufacturers resulted from liaising services rendered by petitioner, and contended that the branch office should thus be considered a commercial broker. The Court of Tax Appeals sustained the Commissioner. On appeal, the Court of Appeals sustained the findings of the Court of Tax Appeals. Petitioner filed this instant petition for review by *certiorari.*

In denying the petition, the Supreme Court ruled that the findings of fact of the Court of Tax Appeals exercising particular expertise on the subject bind the Court, particularly when such findings are affirmed by the Court of Appeals. The Court of Tax Appeals and the Court of Appeals both found that the receipts upon which the assessed deficiency broker's tax had been based were derived from sales consummated between customers in the Philippines and manufacturers abroad, other than petitioner itself; the sales were said to have resulted from the liasing services rendered by its Philippine branch.

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SYLLABUS

1. **TAXATION LAW; NATIONAL INTERNAL REVENUE CODE; COMMERCIAL BROKERS, DEFINED; IMPOSITION OF PERCENTAGE TAX EQUIVALENT TO 7% OF THE GROSS COMPENSATION RECEIVED BY COMMERCIAL BROKERS.**— Section 174 of the National Internal Revenue Code imposes on commercial brokers a percentage tax equivalent to seven (7%) *per centum* of the gross compensation received by them. Section 157(t) of the same code defines a commercial broker to include "all persons, other than importers, manufacturers, producers, or *bona fide* employees, who, for compensation or profit, sell or bring about sales or purchases of merchandise for other persons, or bring proposed buyers and sellers together, or negotiate freights or other business for owners of vessels, or other means of transportation, or for the shippers, or consignors or consignees of freight carried by vessels or other means of transportation. The term includes commission merchant."

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY; FACTUAL FINDINGS OF THE COURT OF TAX APPEALS EXERCISING EXPERTISE ON THE SUBJECT OF TAXATION BIND THE SUPREME COURT.**— The findings of fact of the Court of Tax Appeals exercising particular expertise on the subject bind this Court, particularly when such findings are affirmed by the Court of Appeals.

APPEARANCES OF COUNSEL

Wilfredo U. Villanueva for petitioner.
Solicitor General for respondents.

D E C I S I O N

VITUG, *J.*:

Petitioner appeals from the decision of the Court of Appeals, dated 13 August 1999, in CA-G.R. SP No. 42100 which has affirmed the 12th September 1996 decision of the Court of Tax Appeals in CTA Case No. 4667 ordering petitioner to pay a deficiency percentage tax for the fiscal year ended 31 March

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1987, inclusive of surcharge and interest incident to delinquency, in the amount of ₱767,531.10.

Petitioner Nichimen Corporation is a resident foreign corporation, organized and existing under the laws of Japan, authorized to do business in the Philippines. It maintains a Manila branch in dealing with its Philippine customers.

On 19 January 1990, petitioner received from the Commissioner of Internal Revenue a demand letter with an accompanying notice assessing it for deficiency income tax, fixed tax, expanded withholding tax, and percentage tax in the aggregate amount of ₱1,092,459.94, inclusive of increments, for the fiscal year ended 31 March 1987. The assessments were computed thusly:

"FY-3-31-87 Deficiency Income Tax

Net Income per return		₱2,209,455.00
Add: Unallowable Deductions:		
Depreciation	20,500.00	
Cost of Calculator, beds, & Facsimile Xerox	24,711.00	45,211.00
Net Income per Investigation		2,254,666.00
Income Tax Due Thereon		779,133.00
Less: Tax Due per Return		763,309.00
Deficiency Income Tax		15,824.00
Add: 25% Surcharge		3,956.00
20% Int. p/a fr. 7-15-87 to 1-30-90		9,725.03
Compromise Penalty		4,500.00
TOTAL AMOUNT DUE AND COLLECTIBLE		₱34,005.03

"FY-3-31-87 Deficiency Fixed Tax (As Importer/Exporter)

Basic Tax	₱ 400.00
Add: 25% Surcharge	100.00
20% Int. p/a fr. 5-1-86 to 1-30-90	375.00
Compromise Penalty	100.00
TOTAL AMOUNT DUE AND COLLECTIBLE	₱975.00

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"FY-3-31-87 Deficiency Expanded Withholding Tax

Professional Fee	₱ 10,600.43
Contractor	103.00
Sub-total	10,703.43
Add: 25% Surcharge	2,675.86
20% Int. p/a fr. 5-1-87 to 1-30-90	7,358.61
Compromise Penalty	4,500.00
TOTAL AMOUNT DUE AND COLLECTIBLE	₱ 25,237.90

"FY-3-31-87 Deficiency Withholding Tax on Compensation

Basic Tax Due	₱ 132,495.94
Add: 25% Surcharge	33,123.99
20% Int. p/a fr. 5-1-87 to 1-30-90	91,090.97
Compromise Penalty	8,000.00
TOTAL AMOUNT DUE AND COLLECTIBLE	₱264,710.91

"FY-3-31-87 Deficiency Percentage Tax

	1st Qtr.	2nd Qtr.	3rd Qtr.	4th Qtr.	Total
Basic Tax Due	₱53,382.80	₱81,456.21	₱116,590.27	₱128,289.63	
Less: Payment per Return	611.26 52,771.54	1,594.48 79,861.73	627.05 115,963.22	1,247.39 127,042.24	₱375.638.73
Deficiency Tax	13,192.88	19,965.43	28,990.81	31,760.56	93,909.68
Add: 25% Surcharge 20%Int. p/a up to 1-30-90	46,541.20	65,441.69	87,776.91	88,222.89	287,982.69
Total	₱112,505.62	₱165,268.85	₱232,730.94	₱247,025.69	757,531.10
Add: Compromise					10,000.00
TOTAL AMOUNT DUE AND COLLECTIBLE					₱767,531.10"[1]

Petitioner, through its external auditors Sycip, Gorres Velayo & Co. (SGV & Co.), protested the foregoing assessment in its letter of 06 February 1990. Respondent Commissioner, on 07 October 1991, withdrew the assessment for fixed tax but sustained

[1] Annex A-1, Records, p. 75.

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the other assessments.[2] On 07 November 1991, petitioner finally agreed to pay in full its deficiency income tax, expanded withholding tax, and withholding tax on compensation. The payment was shown per Central Bank Confirmation Receipt No. B24068532 in the total amount of ₱313,953.84; *viz*:

"Deficiency income tax	₱34,005.03
"Expanded withholding tax	25,237.90
"Withholding tax	254,710.91
	₱313,953.84"[3]

Petitioner, however, continued to oppose the assessment for deficiency percentage tax amounting to ₱767,531.10.

On 06 November 1991, it filed with the Court of Tax Appeals a petition for review, alleging materially that the subject assessment was devoid of legal basis. It submitted:

"The assessment for deficiency percentage tax (broker's tax) is based on respondents allegations that the compensation received by petitioner from its Head Office for soliciting orders from Philippine customers should be subject to broker's tax. We most respectfully disagree with this position.

"It should be noted that petitioner's (Nichimen - Manila Branch) act in looking for local buyers is merely liaising for its Head Office. The Head Office then allocates certain amounts to the petitioner (Branch) to cover its operating requirements for the liaising activities it does. The amount allocated to the Branch is considered income attributable to the Branch; this is reported to the Central Bank and converted into Philippine pesos and reported as the Branch's income in its income tax return.

"Under the circumstances, the petitioner (Branch Office) cannot be considered receiving income subject to broker's tax from its own Head Office, in the same manner that a person cannot be considered receiving taxable income from itself.

"The liaising activities of the Branch is performed for its own Head Office. Hence, it is not an activity that is rendered for another person, but for itself because NICHIMEN (Head Office) and NICHIMEN (Manila Branch) are but one, single entity.

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[2] Decision, Court of Tax Appeals, 12 September 1996.

[3] *Ibid.*, p. 4; Records, p. 9.

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"A broker is one who acts as a negotiator or middleman to close a deal between one person and another. A broker is necessarily distinct from the party for which he renders service. In a transaction involving a broker there are three (3) separate and distinct entities; the principal, the broker, and the buyer.

"In the case at bar only two parties are involved NICHIMEN (Head Office) and the Philippine customers, the Manila branch being an integral part of the Head Office. Therefore, there could be no broker/agency transaction in instant case. Accordingly, the amounts received by the Branch from its Head Office cannot be considered commission or brokerage fees subject to broker's tax."[4]

Respondent Commissioner maintained that the assessment for deficiency percentage tax was based on the findings of the Bureau of Internal Revenue that there were receipts for the fiscal year ended 31 March 1997 which showed that certain sales entered into between Philippine customers and foreign manufacturers resulted from the liaising services rendered by petitioner, and contended that the branch office should thus be considered a commercial broker in accordance with Revenue Audit Memorandum Order No. 1-86, par. 3, subpar. 3.2., to wit:

"3. Branch Operation and Consequences

"3.2. The branch solicits purchase orders from local buyers, relays the information to its home office, the home office solicits prospective sellers abroad and eventually received compensation for services rendered.

"In the second type of operation: (i) the branch shall be considered a commercial broker' or indentor; (ii) its share from compensation as allocated by its home office shall be subject to commercial broker gross receipts tax; (iii) the branch shall provide itself with corresponding fixed tax as a commercial broker; and (iv) pay income on its share of the compensation."[5]

The Court of Tax Appeals, in its decision of 12 September 1996, sustained the Commissioner and held:

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[4] Annex D, Records, pp.89-90.

[5] *Rollo*, pp. 69-70.

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"WHEREFORE, in view of the foregoing, the petition for review is hereby DENIED and petitioner is ORDERED to pay the amount of ₱767,531.10 as deficiency percentage tax for the fiscal year ended March 31, 1987, inclusive of increments, plus 20% interest per annum from February 1, 1990 until fully paid pursuant to Section 283(c) of the Tax Code."[6]

The tax court concluded that petitioner had earned commissions from companies other than Nichimen Corporation in Japan and that the compensation it received from the head office represented its share in the commissions received by the head office due to their brokerage activities here and abroad. The commissions received depended on the invoice amounts of import-export transactions. Hence, item 2 of petitioner's Notes to Financial Statements disclosed:

"2. COMPENSATIONS RECEIVED FROM HOME OFFICE AND COMMISSIONS

"Compensations received from Home Office represent income computed at certain percentages of invoice amounts of import and export transactions in the Philippines of the Home Office and others.

"Commissions represent income computed at certain percentage of invoice amounts of import and export transactions in the Philippines of certain affiliates of Nichimen Corporation and of other parties."[7]

Ms. Myrna Lou Tabije, one of the examiners who investigated the instant tax case, explained:

"Q Now, according to this report, one of your findings is for deficiency broker's tax in the amount of ₱718,851.68. Could you explain briefly the basis of this assessment?

"A As stated here in the report, the broker's tax assessment here in this report is based on the compensation, these are share of commission of the branch from the head office or transactions wherein the branch solicits orders from local customers, Philippine customers and notify the head office who in turn look for the commodities that the Philippine

[6] Records, p. 20.

[7] Records, p. 15.

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branch needs. And another instance wherein the head office orders the branch to look for local products wherein the branch merely monitors the shipping to the importer of these local products. And the documents presented there show that the[y] are merely the agent of the buyer and the seller. The head office does not have records of sale and purchases of these imports and exports.

"Q Now, you recommended a deficiency of ₱718,000.00 (sic) as broker's tax. How did you arrive at this amount?

"A In this docket, on page 181, this is the computation how we arrived at the deficiency tax.

"Q Where did you base the amount appearing in this computation of yours?

"A These are taken from the documents presented to us by the taxpayer. This amount was also computed here as shown in pages 155 to 158. (pp. 6-8, TSN, Hearing on March 23, 1995.)"[8]

The Court of Tax Appeals gave weight to respondent's testimonial and documentary evidence justifying the demand for the deficiency broker's tax on petitioner. On appeal to it, the Court of Appeals, in its decision promulgated on 13 August 1999, sustained the findings of the Court of Tax Appeals. Holding petitioner to be a commercial broker, the appellate court ratiocinated:

"After assiduously evaluating the respective positions of the parties, we have come to the conclusion that the assailed decision of the CTA is free from any reversible error. It is essentially based on facts and information disclosed by petitioner's own documents as testified to by tax examiner Myrna Lou Tabije. Of particular interest are the Notes to Financial Statements submitted by the petitioner no less which demonstrate that it had been receiving compensations and commissions from its home office, the Nichimen Corporation in Japan, over and above its fixed periodical subsidy. These compensations and commissions, by petitioner's own description, represented income computed at certain percentages of invoice

[8] *Rollo*, p. 46.

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amounts of import-export transactions in the Philippines of the petitioner and others, and import-export transactions in the Philippines of certain affiliates of the Nichimen Corporation (Japan) and other parties. These are clearly indicative of acts of a commercial broker. Above all, Mr. C. C. Gison of the Tax Division of SGV & Co., external auditors of the petitioner, let the cat out of the bag, so to speak, when in his letter of August 3, 1989, cited in the challenged CTA decision, he stated, *inter alia*, that the petitioner is not liable for the deficiency fixed tax as it is only engaging in business as a broker.' The petitioner never bothered to disown or neutralize this highly damaging admission. Thus, the self-serving testimony of its witness, Kenji Chijinatsu, easily pales upon juxtaposition with the respondent's evidence."[9]

On 01 October 1999, Nichimen Corporation (Manila Branch) has filed the instant petition for review by *certiorari.*

Section 174 of the National Internal Revenue Code imposes on commercial brokers a percentage tax equivalent to seven (7%) *per centum* of the gross compensation received by them. Section 157(t) of the same code defines a commercial broker to include "all persons, other than importers, manufacturers, producers, or *bona fide* employees, who, for compensation or profit, sell or bring about sales or purchases of merchandise for other persons, or bring proposed buyers and sellers together, or negotiate freights or other business for owners of vessels, or other means of transportation, or for the shippers, or consignors or consignees of freight carried by vessels or other means of transportation. The term includes commission merchant."

A broker, in general, is a middleman who acts for others, on a commission, negotiating contracts relative to property with the custody of which he has no concern; he is, in more ways than one, an agent of both parties.[10] His task is to bring the parties together and to get them to come to an agreement.[11]

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[9] *Rollo*, pp. 55-56.

[10] *Behn, Meyer, and Co. Ltd. vs. Nolting and Garcia,* 35 Phil. 274, cited in *Kuenzle & Streiff, Inc. vs. Comm. of Internal Revenue,* 120 Phil. 1092.

[11] *CIR vs. Cadwallader Pacific Co.,* 18 SCRA 827.

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A basic characteristic of a broker is that he acts not for himself, but for a third person, regardless of whether the fee paid to him is a fixed amount, regular or not, or whether the act performed by him can be performed by the principal or not.[12] Strictly, a commission merchant differs from a broker in that he may buy and sell in his own name without having to disclose his "principal," for which purpose, the goods are placed in his possession and at his disposal, features that are not true in the case of a broker.[13] The commission merchant thus maintains a relation not only with the parties but also with the property subject matter of the transaction.[14] A dealer buys and sells for his own account.

The Court of Tax Appeals and the Court of Appeals both found that the receipts upon which the assessed deficiency broker's tax had been based were derived from sales consummated between customers in the Philippines and manufacturers abroad, other than petitioner itself; the sales were said to have resulted from the liaising services rendered by its Philippine branch.

The findings of fact of the Court of Tax Appeals exercising particular expertise on the subject bind this Court, particularly when such findings are affirmed by the Court of Appeals.[15]

Given all the foregoing, the Court cannot sustain the position taken by petitioner.

WHEREFORE, the petition is *DENIED*. Costs against petitioner.

SO ORDERED.

Melo (Chairman), Panganiban, Sandoval-Gutierrez, and *Carpio, JJ.,* concur.

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[12] *Kuenzle & Streiff, Inc. vs. Comm. of Internal Revenue*, 120 Phil. 1092.

[13] 7-A Words and Phrases, Perm. Ed., p. 571 cited in *Commissioner of Internal Revenue vs. Cadwallader Pacific Company*, 18 SCRA 827.

[14] *Pacific Commercial Company vs. Alfredo Yatco*, 68 Phil. 398.

[15] *Yobido vs. Court of Appeals,* 281 SCRA 1.