

FIRST DIVISION

[G.R. No. 176229, October 19, 2011]

**HO WAI PANG, PETITIONER, VS. PEOPLE OF THE PHILIPPINES,
RESPONDENT.**

D E C I S I O N

DEL CASTILLO, J.:

Infraction of the rights of an accused during custodial investigation or the so-called Miranda Rights render inadmissible only the extrajudicial confession or admission made during such investigation.^[1] "The admissibility of other evidence, provided they are relevant to the issue and is not otherwise excluded by law or rules, is not affected even if obtained or taken in the course of custodial investigation."^[2]

Petitioner Ho Wai Pang (petitioner) in this present recourse assails the June 16, 2006 Decision^[3] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01459 affirming the April 6, 1995 Decision^[4] of the Regional Trial Court (RTC), Branch 118 of Pasay City in Criminal Case No. 91-1592, finding him and his co-accused, namely, Law Ka Wang, Chan Chit Yue,^[5] Wu Hing Sum, Tin San Mao^[6] and Kin San Ho^[7] guilty beyond reasonable doubt for violation of Section 15, Article III^[8] of Republic Act (R.A.) No. 6425 otherwise known as the Dangerous Drugs Act of 1972. Also assailed is the January 16, 2007 CA Resolution^[9] denying the motion for reconsideration thereto.

Factual Antecedents

On September 6, 1991, at around 11:30 in the evening, United Arab Emirates Airlines Flight No. 068 from Hongkong arrived at the Ninoy Aquino International Airport (NAIA). Among the passengers were 13 Hongkong nationals who came to the Philippines as tourists. At the arrival area, the group leader Wong Kwok Wah (Sonny Wong) presented a Baggage Declaration Form to Customs Examiner Gilda L. Cinco (Cinco), who was then manning Lane 8 of the Express Lane. Cinco examined the baggages of each of the 13 passengers as their turn came up. From the first traveling bag, she saw few personal belongings such as used clothing, shoes and chocolate boxes which she pressed. When the second bag was examined, she noticed chocolate boxes which were almost of the same size as those in the first bag. Becoming suspicious, she took out four of the chocolate boxes and opened one of them. Instead of chocolates, what she saw inside was white crystalline substance contained in a white transparent plastic. Cinco thus immediately called the attention of her immediate superiors Duty Collector Alalo and Customs Appraiser Nora Sancho who advised her to call the Narcotics Command (NARCOM) and the police. Thereupon, she guided the tourists to the Intensive Counting Unit (ICU) while bringing with her the four chocolate boxes earlier discovered.

At the ICU, Cinco called the tourists one after the other using the passenger manifest and further examined their bags. The bag of Law Ka Wang was first found to contain three chocolate boxes. Next was petitioner's bag which contains nothing except for personal effects. Cinco, however, recalled that two of the chocolate boxes earlier discovered at the express lane belong to him. Wu Hing Sum's bag followed and same yielded three chocolate boxes while the baggages of Ho Kin San, Chan Chit Yue and Tin San Mao each contained two or three similar chocolate boxes. All in all, 18 chocolate boxes were recovered from the baggages of the six accused.

NARCOM Agent Neowillie de Castro corroborated the relevant testimony of Cinco pertaining to the presence of the chocolate boxes. According to him, he conducted a test on the white crystalline substance contained in said chocolate boxes at the NAIA using the Mandelline Re-Agent Test.^[10] The result of his examination^[11] of the white crystalline substance yielded positive for methamphetamine hydrochloride or *shabu*. Thereafter, the chocolate boxes were bundled together with tape, placed inside a plastic bag and brought to the Inbond Section.

The following day, September 7, 1991, the 13 tourists were brought to the National Bureau of Investigation (NBI) for further questioning. The confiscated stuff were turned over to the Forensic Chemist who weighed and examined them. Findings show that its total weight is 31.1126 kilograms and that the representative samples were positive for methamphetamine hydrochloride.^[12] Out of the 13 tourists, the NBI found evidence for violation of R.A. No. 6425 only as against petitioner and his five co-accused.

Accordingly, six separate Informations all dated September 19, 1991 were filed against petitioner and his co-accused. These Informations were docketed as Criminal Case Nos. 91-1591 to 97. Subsequently, however, petitioner filed a Motion for Reinvestigation^[13] which the trial court granted. The reinvestigation conducted gave way to a finding of conspiracy among the accused and this resulted to the filing of a single Amended Information^[14] under Criminal Case No. 91-1592 and to the withdrawal of the other Informations.^[15] The Amended Information reads:

That on or about September 6, 1991 in Pasay City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, did, then and there, willfully, unlawfully and feloniously carry and transport into the country without lawful authority, 31.112 kilograms, more or less, of Methamphetamine Hydrochloride, also popularly known as "SHABU", a regulated drug.

CONTRARY TO LAW.^[16]

After pleading not guilty to the crime charged,^[17] all the accused testified almost identically, invoking denial as their defense. They claimed that they have no knowledge about the transportation of illegal substance (*shabu*) taken from their traveling bags which were provided by the travel agency.

Ruling of the Regional Trial Court

On April 6, 1995, the RTC rendered a Decision^[18] finding all the accused guilty of violating Section 15, Article III of R.A. No. 6425, as amended, the decretal portion of which reads:

WHEREFORE, all the foregoing considered, the Court finds the accused LAW KA WANG, CHAN CHIT yue, ho wai pang, wu hing sum, tin sun mao, and kin san ho (ho kin san) guilty of Conspiracy in violating Section 15, Article III, Republic Act No. 6425, as amended for having conspired to transport into the Philippines 31.112 kilograms of methamp[h]etamine hydrochloride, locally known as Shabu, and they are hereby sentenced to suffer the PENALTY OF IMPRISONMENT OF SIX (6) [sic] RECLUSION PERPETUA AND TO PAY EACH (SIC) THE AMOUNT OF THIRTY (30) THOUSAND PESOS (p30,000.00) each as FINE, the penalty of reclusion perpetua is being imposed pursuant to Republic Act No. 7659 considering its applicability to the accused though retroactively for having a less stricter penalty than that of life imprisonment provided in Republic Act No. 6425. The fine of P30,000.00 for each accused is imposed pursuant to R.A. No. 6425 it being more favorable to the accused [than] that provided in R.A. No. 7659 WITH IMMEDIATE DEPORTATION AFTER SERVICE OF SENTENCE. The penalty of death cannot be imposed since the offense was committed prior to the effectivity of R.A. No. 7659.

Let an alias warrant of arrest be issued against accused WONG KOK WAH @ SONNY WONG, CHAN TAK PIU, HO WAI LING AND INOCENCIA CHENG.

SO ORDERED.^[19]

From this judgment, all the accused appealed to this Court where the case records were forwarded to per Order of the RTC dated May 10, 1995.^[20] Later, all the accused except for petitioner, filed on separate dates their respective withdrawal of appeal.^[21] This Court, after being satisfied that the withdrawing appellants were fully aware of the consequences of their action, granted the withdrawal of their respective appeals through a Resolution dated June 18, 1997.^[22] Per Entry of Judgment, ^[23] said Resolution became final and executory on July 7, 1997. Consequently, petitioner was the only one left to pursue his appeal.

Petitioner filed his Brief^[24] on April 6, 1998 while the brief^[25] for the respondent People of the Philippines was filed on August 27, 1998 through the Office of the Solicitor General (OSG). Per Resolution^[26] dated August 30, 2004, this Court referred the appeal to the CA for proper disposition and determination pursuant to this Court's ruling in *People v. Mateo*.^[27]

Ruling of the Court of Appeals

On June 16, 2006, the CA denied the appeal and affirmed the Decision of the RTC. While conceding that petitioner's constitutional right to counsel during the custodial investigation was indeed violated, it nevertheless went on to hold that there were other evidence sufficient to warrant his conviction. The CA also rebuked petitioner's

claim that he was deprived of his constitutional and statutory right to confront the witnesses against him. The CA gave credence to the testimonies of the prosecution witnesses and quoted with favor the trial court's ratiocination regarding the existence of conspiracy among the accused.

Undeterred, petitioner filed a Motion for Reconsideration^[28] which the CA denied in its Resolution^[29] dated January 16, 2007.

Hence, this petition for review on *certiorari* anchored on the following grounds:

I

WHILE ACKNOWLEDGING THAT PETITIONER WAS DEPRIVED OF HIS CONSTITUTIONAL AND STATUTORY RIGHTS UNDER CUSTODIAL INVESTIGATION BOTH BY THE CUSTOMS OFFICIALS AND BY THE NBI INVESTIGATORS, THE HONORABLE COURT OF APPEALS ERRED IN NOT EXCLUDING EVIDENCE TAKEN DURING THE CUSTODIAL INVESTIGATION.

II

THE HONORABLE COURT OF APPEALS ERRED IN NOT CONSIDERING THAT PETITIONER WAS DEPRIVED OF HIS CONSTITUTIONAL RIGHT TO CONFRONT THE WITNESSES AGAINST HIM.

III

THE HONORABLE COURT OF APPEALS ERRED IN NOT FINDING THAT THE PROSECUTION'S EVIDENCE FAILED TO ESTABLISH THE EXISTENCE OF A CONSPIRACY.

IV

THE HONORABLE COURT OF APPEALS ERRED IN NOT FINDING THAT THE PROSECUTION FAILED TO PRESENT PROOF BEYOND REASONABLE DOUBT AS TO OVERTURN THE PRESUMPTION OF INNOCENCE ACCORDED TO PETITIONER BY THE CONSTITUTION.^[30]

OUR RULING

The petition lacks merit.

Section 12, Article III of the Constitution prohibits as evidence only confessions and admissions of the accused as against himself.

Anent the error first assigned, petitioner takes issue on the fact that he was not assisted by a competent and independent lawyer during the custodial investigation. He claimed that he was not duly informed of his rights to remain silent and to have competent counsel of his choice. Hence, petitioner faults the CA in not excluding evidence taken during such investigation.

While there is no dispute that petitioner was subjected to all the rituals of a custodial questioning by the customs authorities and the NBI in violation of his constitutional right under Section 12^[31] of Article III of the Constitution, we must not, however, lose sight of the fact that what said constitutional provision prohibits as evidence are only confessions and admissions of the accused as against himself. Thus, in *Aquino v. Paiste*,^[32] the Court categorically ruled that "the infractions of the so-called Miranda rights render inadmissible 'only the extrajudicial confession or admission made during custodial investigation.' The admissibility of other evidence, provided they are relevant to the issue and [are] not otherwise excluded by law or rules, [are] not affected even if obtained or taken in the course of custodial investigation."

In the case at bench, petitioner did not make any confession or admission during his custodial investigation. The prosecution did not present any extrajudicial confession extracted from him as evidence of his guilt. Moreover, no statement was taken from petitioner during his detention and subsequently used in evidence against him. Verily, in determining the guilt of the petitioner and his co-accused, the trial court based its Decision on the testimonies of the prosecution witnesses and on the existence of the confiscated *shabu*. As the Court held in *People v. Buluran*,^[33] "[a]ny allegation of violation of rights during custodial investigation is relevant and material only to cases in which an extrajudicial admission or confession extracted from the accused becomes the basis of their conviction." Hence, petitioner's claim that the trial court erred in not excluding evidence taken during the custodial investigation deserves scant consideration.

Petitioner cannot take refuge in this Court's ruling in *People v. Wong Chuen Ming*^[34] to exculpate himself from the crime charged. Though there are semblance in the facts, the case of *Ming* is not exactly on all fours with the present case. The disparity is clear from the evidence adduced upon which the trial courts in each case relied on in rendering their respective decisions. Apparently in *Ming*, the trial court, in convicting the accused, relied heavily on the signatures which they affixed on the boxes of Alpen Cereals and on the plastic bags. The Court construed the accused's act of affixing their signatures thereon as a tacit admission of the crime charged. And, since the accused were not informed of their Miranda rights when they affixed their signatures, the admission was declared inadmissible evidence for having been obtained in violation of their constitutional rights. In ruling against the accused, the trial court also gave credence to the sole testimony of the customs examiner whom it presumed to have performed his duties in regular manner. However, in reversing the judgment of conviction, the Court noted that said examiner's testimony was not corroborated by other prosecution witnesses.

On the other hand, petitioner's conviction in the present case was on the strength of his having been caught *in flagrante delicto* transporting *shabu* into the country and not on the basis of any confession or admission. Moreover, the testimony of Cinco was found to be direct, positive and credible by the trial court, hence it need not be corroborated. Cinco witnessed the entire incident thus providing direct evidence as eyewitness to the very act of the commission of the crime. As the Court held in *People v. Dela Cruz*,^[35] "[n]o rule exists which requires a testimony to be corroborated to be adjudged credible. x x x Thus, it is not at all uncommon to reach a conclusion of guilt on the basis of the testimony of a single witness despite the