

THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. TSANG HIN WAI, CHOI MING CHEUNG, and ANDY CHAN CHIWAI, defendants, TSANG HIN WAI and CHOI MING CHEUNG, defendants-appellants.

G.R. No. 66389. September 08, 1986

Ponente: YAP, C.J.

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YAP, C.J.:

The sentence of death imposed on Tsang Hin Wai and Choi Ming Cheung, both British nationals from Hongkong, is before us for automatic review.

On October 23, 1980, the City Fiscal of Pasay City, Metro Manila, filed an information against Tsang Hin Wai, Choi Ming Cheung and Andy Chan Chiwai for illegal importation of prohibited drugs, in violation of Section 3, Article II of Republic Act No. 6425, as amended by Presidential Decree No. 1683, committed as follows:

"That on the 15th and 16th day of October, 1980, in Pasay City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, did then and there wilfully, unlawfully and feloniously import and bring into the Philippines prohibited drugs consisting of 2.8 kilos of heroin without authority of law."

Upon arraignment on October 27, 1980, all the three defendants pleaded "not guilty."

Trial was commenced on October 30, 1980. After the presentation of the evidence for the prosecution, the accused Choi Ming Cheung and Andy Chan Chiwai each moved for a separate trial, which the court granted.

The following facts are not controverted:

The accused Tsang Hin Wai and Choi Ming Cheung both left Hongkong for Bangkok on October 7, 1980 on the same flight. Subsequently, they left Bangkok for Manila on October 16, 1980, taking the same flight, TG Flight 201 of Thai International Airways, which arrived at the Manila International Airport around 3:00 o'clock p.m. The dates of their departure from Hongkong, arrival in and departure from Bangkok, and arrival in Manila are shown on their passports, Exhibits "M" and "N", and have been admitted by them in their testimonies.

Upon arrival at the Manila International Airport, Tsang went to the interline office to claim his unaccompanied luggage which arrived the day before, i.e., on October 15, 1980, from Bangkok on Thai International Airways.

Discovered inside the luggage of Tsang, upon inspection by the customs authorities, was a plastic bag containing a powdered substance, almost white in color. This plastic bag was found hidden in a secret compartment, a false bottom, of the luggage. The powder was tested and found to be heroin, weighing 2.8 kilograms.

Tsang was immediately apprehended by Roberto Santayana, Senior Intelligence Officer of the Bureau of Customs and head of a team called SCAN (Suspected Cargo Anti-Narcotics team) at the Manila International Airport. After preliminary interrogation by the SCAN team, Tsang was turned over to the investigation Section of the customs police at the airport for investigation. Tsang was interrogated by a team headed by Atty. Rolando Yebes through

an interpreter by the name of Edward Chen, and his statement was taken down in writing (Exhibit "H"). Tsang admitted that he was the owner of the brown luggage that contained the heroin. In his statement, he revealed that Choi was with him on board the plane from Bangkok to Manila; that he believed it was Choi who placed the drug in the suitcase because while in the Empire Hotel in Bangkok, he saw the former inserting something in the suitcase; that he was to deliver the suitcase containing the heroin to Choi at the Mabuhay Hotel in Manila; that a Captain Chan (Andy Chan Chiwai) would pick it up at the hotel; that he knew Choi and Chan to be members of a drug syndicate in Hongkong.

Checking the plane manifest, Yebes confirmed the fact of Choi's arrival on the same plane with Tsang. With the information provided by Tsang, a team of customs policemen went to Mabuhay Hotel to look for Choi.

When the customs police found Choi in Room 315 of the Mabuhay Hotel, he was with another person, Andy Chan Chiwai, the third accused in this case. Both of them were promptly taken in for investigation at the customs police office at the Manila International Airport. The written statement of Choi was taken down by the team of Atty. Yebes (Exhibit "L").

Thereafter, the customs police turned over all three suspects to the Constabulary Anti-Narcotics Unit (CANU) at Camp Crame where they underwent interrogation under Col. Jewel Canson. The statements of Tsang (Exhibit "P") and Andy Chan Chiwai (Exhibits "R" and "S") were taken down in writing.

On October 21, 1980, two employees of the Hongkong Customs and Excise Service, Senior Inspector Wai Chi Hung and Assistant Superintendent Ho Ken Sai, came to Manila and, with the permission of the PC Chief, were allowed to interrogate the three accused, separately, in the office of Col. Jewel Canson on October 22, 24 and 25, 1980. Statements were obtained from each of the accused in writing, in Chinese characters, which were brought to Hongkong by the Hongkong customs investigators and later translated into English. The translations were authenticated by the Philippine Consulate in Hongkong and later introduced in evidence at the trial as Exhibits "T", "U", "V" and "W" when Senior Inspector Wai testified for the prosecution. These statements revealed a drug smuggling operation based in Bangkok and Hongkong, and detailed the involvement or participation of each of the accused in the operation.

At the trial, the three accused repudiated their written statements, saying that they were forced to give the statements under duress and without benefit of counsel. In its decision, the trial court noted that the alleged confessions were taken during the custodial interrogation of the accused without the assistance of counsel; hence, the court declared these statements inadmissible on the basis of the rulings of this Court interpreting the provisions of Section 20 of Article IV of the 1973 Constitution which guarantee to persons under investigation for the commission of an offense the right to remain silent and the right to counsel.

In rejecting the extrajudicial confessions of the accused, however, the trial court held that:

"x x x in the case of both accused Tsang Hin Wai and Choi Ming Cheung, even disregarding their confessions as part of the evidence against them, there still remain direct evidence to show that the two (2) of them actually committed the crime charged in the Information inasmuch as they were found to have brought the heroin to the Manila International Airport from Bangkok. In the case of Andy Chan Chiwai, on the other hand, the evidence relied upon by the prosecution is basically his extrajudicial confession which under the circumstances, as herein before stated, is inadmissible; hence, Andy Chan Chiwai is entitled to an acquittal. There is no evidence of his participation in the crime nor is there an evidence of his involvement in a conspiracy independent of his 'confession'."

Appellant Tsang Hin Wai claims that the trial court erred: (0 in finding him guilty beyond reasonable doubt of the offense charged; and (2) in imposing the penalty of death.

On his part, appellant Choi Ming Cheung maintain that the trial court erred in holding that there was "direct evidence" showing that he committed the crime charged, and in convicting him.

The evidence shows that a plastic bag containing a whitish powder weighing 2.8 kilograms was found in the luggage claimed by Tsang at the interline office upon his arrival at the Manila International Airport in the afternoon of October 16, 1980. The suitcase, brown in color, which had the word "Bang" pasted on it, arrived the day before on Thai International Airways from Bangkok. Inside the suitcase were the clothes and personal effects of Tsang. The plastic bag containing the white powder was hidden beneath a false bottom of the suitcase. Laboratory tests confirmed that the powder was heroin. This finding was not contested by the appellants.

Testifying in his own behalf, Tsang tried to show that he was not aware of the false bottom in his luggage; that he did not know there was heroin inside the luggage; that the heroin did not belong to him. In short, he pictured himself as an unknowing and innocent carrier of the prohibited drug. He even tried to conjure the possibility that he was framed; the suitcase shown to him by the customs police, who according to him were waiting for him in a room at the interline office when he showed up to claim his luggage, appeared to have been tampered and could be opened without the use of the key which was in his possession.

According to Tsang, the suitcase was given to him as a "present" by Choi's father the day before he and Choi left Hongkong for Bangkok. He claimed that Choi's father asked him to be the "travelling companion" of Choi to Bangkok; that for his expenses, he was given HK\$5,000 by Choi's father, although he also brought HK\$5,000 of his own money; that while in Bangkok, he was asked by Choi's father, who called by long distance from Hongkong, to proceed to Manila to accompany Choi; that he had to purchase his air ticket for the trip to Manila.

The testimony of Tsang does not strike us as credible. We find his story that he undertook the trip to Bangkok as a "travelling companion" of Choi hard to believe. From his own account, it appears that while in Bangkok, he did not stay in the same hotel where Choi was billeted. Moreover, Choi apparently had close relatives, i.e., mother and aunt residing in Bangkok, and had been to Bangkok several times before, making it hardly necessary for a "travelling companion" to accompany him. Tsang's story that while in Bangkok he was asked by Choi's father to proceed to Manila to accompany Choi is also difficult to believe. The ticket which was purchased and paid for by Tsang in Bangkok (Exhibit "J") shows his itinerary to be Bangkok-Manila, Manila-Hongkong, and Hongkong-Bangkok, thereby negating his claim that he was just accompanying Choi to Manila. Overall, his testimony lacks the ring of truth.

We, therefore, find no reason to disturb the finding of the trial court regarding Tsang's guilt. We are convinced of his guilt beyond reasonable doubt.

With respect to Choi, however, the evidence adduced at the trial is insufficient to establish his guilt with moral certainty. While the circumstances of the case place him as a prime suspect along with Tsang, there is no proof, direct or circumstantial, sufficient to nail him down. Without the alleged extrajudicial confessions of the accused, the evidence adduced by the prosecution at the trial is insufficient to link Choi to the importation of the heroin found in Tsang's luggage. The testimony of Tsang cannot be considered against Choi. As correctly pointed out by Choi's counsel de oficio in his brief, the declaration of Tsang on the witness stand cannot be taken into account as evidence against Choi, since the trial court had granted separate trials for the accused. Moreover, there is really nothing in the testimony of Tsang, even if we were to believe him, which provides a substantial basis for linking Choi to the importation of the prohibited drug. Tsang's testimony in which he tried to show that he was asked by Choi's father to be the "travelling companion" of Choi in the trip to Bangkok and Manila, that the suitcase he used was given to him by Choi's father, that he left the suitcase unlocked in the house of Choi's mother in Bangkok the day before it was checked-in for Manila, and that Choi told him to stay at Mabuhay Hotel in Manila where he

would also be staying, sought to establish circumstances which, at best, would give rise to an inference or speculation that Choi had something to do with the heroin transported to Manila in Tsang's luggage. However, the accused cannot be convicted on mere inference or speculation.

It is clear that there is no sufficient evidence to convict Choi of the offense charged in the information.

The remaining question to decide is the penalty. In addition to a fine, the penalty prescribed by the law for the offense consists of two indivisible penalties. Section 3 of Article 11 of the Dangerous Drugs Act of 1972 (Republic Act No. 6425), as amended by P.D. 1683, provides:

"Sec. 3. Importation of Prohibited Drugs. — The penalty of life imprisonment to death and a fine ranging from twenty to thirty thousand pesos shall be imposed upon any person who, unless authorized by law, shall import or bring into the Philippines any prohibited drug."

The trial court chose to impose the penalty of death and a fine of thirty thousand pesos on the convicted accused. In imposing the death penalty, the court stated:

"It finally appears from the evidence that the 2.8 kilos of heroin was illegally imported into the Philippines. If we were to take into account the possible damage that this quantity of poison could do to the residents of this country who would avail themselves of the illegitimate use of the same, it would be unimaginable. It is a public knowledge that dangerous drugs crimes and similar offenses are daily occurrences. The country's highest police officer, General Fidel Ramos, admits the rise in crime rate.

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Under the present circumstances, using the expression of the Supreme Court, 'this Court will not shirk from its duty to impose the penalty of death' when, as in this case, the law and the evidence so warrant. This the Court must do as a deterrent to the criminally minded, in defense of society."

In her brief, counsel de oficio for appellant Tsang disagrees, citing the provisions of Article 63 (2) of the Revised Penal Code on the application of indivisible penalties, to wit:

"Art. 63. Rules for the application of indivisible penalties. -xxx

In all cases in which the law prescribes a penalty composed of two Indivisible penalties, the following rules shall be observed in the application thereof:

xxx

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

xxx xxx xxx"

Appellant contends that in the present case, since no aggravating circumstances are alleged or proved, the lesser penalty of life imprisonment should be imposed.

The appellee, on the other hand, contends that the above-cited provision of the Revised Penal Code is not applicable in cases involving offenses punishable under a special law. Appellee maintains that the accused was charged and convicted of a crime penalized under a special law; hence, whether it is life imprisonment or death that should be imposed, is a matter for the court to determine in its sound discretion, taking into consideration the circumstances of the case.

We find no merit in appellee's contention. True, this Court in several cases[1] has laid down the doctrine that offenses which are punishable under special laws are not subject to the provisions of the Revised Penal Code

regarding application of penalties. However, the doctrine is not controlling in the present case.

The cases which spawned the above doctrine involved special laws which, while prescribing the penalties for the offense, explicitly granted to the court the discretion to determine the penalty to be meted out within the range of the prescribed penalties. The rationale of the doctrine was clearly explained in *People vs. Ramos*, which involved prosecution for illegal possession of firearms punishable under the Revised Administrative Code. The penalty prescribed under the said Code was "imprisonment for a period of not exceeding one year, or both imprisonment not exceeding such period and a fine not exceeding One Thousand Pesos, in the discretion of the Court" (Section 2692). Pointing out that as provided in Article 10 the provisions of the Revised Penal Code shall be "supplementary" to special laws, this Court held that where the special law expressly grants to the court discretion in applying the penalty prescribed for the offense, there is no room for the application of the provisions of the Code. Said this Court:

"x x x 'Suplir es integrar lo que falta en una cosa.' (Die. de la Academia, Ed. 1914). Cuando la ley espresamente concede discretion al tribunal en la aplicacion de la pena dispuesta por la ley no falta nada. La discretion concedida en el Codigo Administrative) es la que esta en lugar de las 'Reglas para la aplicacion de la penas' en el Codigo Penal Revisado. "[2]

The Dangerous Drugs Act of 1972, as amended by P.D. No. 1623, contains no explicit grant of discretion to the court in the application of the penalty prescribed by the law. In such case, the court must be guided by the rules prescribed by the Revised Penal Code concerning the application of penalties which distill the "deep legal thought and centuries of experience in the administration of criminal laws."

Applying the provisions of Article 63, paragraph 2, of the Revised Penal Code, the penalty that should be imposed on the convicted accused is life imprisonment and a fine of P20,000.00.

WHEREFORE, the appealed judgment is hereby modified, and the accused-appellant Tsang Hin Wai hereby sentenced to reclusion perpetua and to pay a fine of P20,000.00. The accused-appellant Choi Ming Cheung is hereby acquitted. Costs de officio.

SO ORDERED.

Teehankee, C.J., Feria, Fernan, Narvasa, Melencio-Herrera, Alampay, Gutierrez, Jr., Cruz, Paras, and Feliciano, JJ., concur.

[1] *People vs. Lagunam*, 107 Phil. 995 (1960); *People v. Gonzales*, 82 Phil. 307 (1948); *People vs. Ramos*, 78 Phil. 397 (1957); *U.S. vs. Lao Lock Hing*, 74 Phil. 86 (1909).

[2] *People vs. Ramos*, 78 Phil. 377.

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