

EN BANC**[G.R. No. 128222, June 17, 1999]****PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CHUA
HO SAN @ TSAY HO SAN, ACCUSED-APPELLANT.****D E C I S I O N****DAVIDE, JR., C.J.:**

Chua Ho San @ Tsay Ho San (hereafter CHUA) prays for his acquittal and the reversal of the judgment of 10 February 1997 of the Regional Trial Court (RTC) of San Fernando, La Union, Branch 66, finding him guilty of transporting, without appropriate legal authority, the regulated substance methamphetamine hydrochloride, in violation of Section 15,^[1] Article III of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972 as further amended by R.A. No. 7659,^[2] and sentencing him to "die by lethal injection." In view thereof, the judgment was brought to this Court for automatic review pursuant to Article 47 of the Revised Penal Code, as amended by Section 11 of R.A. No. 7659.

In response to reports of rampant smuggling of firearms and other contraband, Jim Lagasca Cid (hereafter CID), as Chief of Police of the Bacnotan Police Station, of La Union began patrolling the Bacnotan coastline with his officers. While monitoring the coastal area of Barangay Bulala on 29 March 1995, he intercepted a radio call at around 12:45 p.m. from Barangay Captain Juan Almoite (hereafter ALMOITE) of Barangay Tammocalao requesting police assistance regarding an unfamiliar speedboat the latter had spotted. According to ALMOITE, the vessel looked different from the boats ordinarily used by fisherfolk of the area and was poised to dock at Tammocalao shores. CID and six of his men led by his Chief Investigator, SPO1 Reynoso Badua (hereafter BADUA), proceeded forthwith to Tammocalao beach and there conferred with ALMOITE. CID then observed that the speedboat ferried a lone male passenger. As it was routine for CID to deploy his men in strategic places when dealing with similar situations, he ordered his men to take up positions thirty meters from the coastline. When the speedboat landed, the male passenger alighted, and using both hands, carried what appeared a multicolored strawbag. He then walked towards the road. By this time, ALMOITE, CID and BADUA, the latter two conspicuous in their uniform and issued side-arms, became suspicious of the man as he suddenly changed direction and broke into a run upon seeing the approaching officers. BADUA, however, prevented the man from fleeing by holding on to his right arm. Although CID introduced themselves as police officers, the man appeared impassive. Speaking in English, CID then requested the man to open his bag, but he seemed not to understand. CID thus tried speaking Tagalog, then Ilocano, but still to no avail. CID then resorted to what he termed "sign language;" he motioned with his hands for the man to open the bag. This time, the man apparently understood and acceded to the request. A search of the bag yielded several transparent plastic packets containing yellowish crystalline substances. CID then gestured to the man to close the bag, which he did. As CID wished to proceed to the police station, he

signaled the man to follow, but the latter did not to comprehend. Hence, CID placed his arm around the shoulders of the man and escorted the latter to the police headquarters.

At the police station, CID surmised, after having observed the facial features of the man, that he was probably Taiwanese. CID then "recited and informed the man of his constitutional rights" to remain silent, to have the assistance of a counsel, etc. Eliciting no response from the man, CID ordered his men to find a resident of the area who spoke Chinese to act as an interpreter. In the meantime, BADUA opened the bag and counted twenty-nine (29) plastic packets containing yellowish crystalline substances which he and CID suspected was shabu. The interpreter, Mr. Go Ping Guan, finally arrived, through whom the man was "apprised of his constitutional rights." The police authorities were satisfied that the man and the interpreter perfectly understood each other despite their uncertainty as to what language was spoken. But when the policemen asked the man several questions, he retreated to his obstinate reticence and merely showed his I.D. with the name Chua Ho San printed thereon. CHUA's bag and its contents were sent to the PNP Crime Laboratory at Camp Diego Silang, Carlatan, San Fernando, La Union for laboratory examination. In the meantime, CHUA was detained at the Bacnotan Police Station.

Later that same day, Police Chief Inspector and Forensic Chemist Theresa Ann Bugayong Cid of the Philippine National Police, Region I, received a letter request^[3] from CID - incidentally her husband - to conduct a laboratory examination of twenty-nine (29) plastic packets placed inside a multicolored strawbag. In her Chemistry Report No. D-025-95,^[4] she stated that her qualitative examination established the contents of the plastic packets, weighing 28.7 kilos, to be positive of methamphetamine hydrochloride or shabu, a regulated drug.

CHUA was initially charged with illegal possession of methamphetamine hydrochloride before the RTC which docketed the case as Criminal Case No. 4037. However, pursuant to the recommendation of the Office of the Provincial Prosecutor of San Fernando, La Union, that the facts of the case could support an indictment for illegal transport of a regulated drug, the information was subsequently amended to allege that CHUA "willfully, unlawfully and feloniously transpor(ted) 28.7 kilos of [m]ethamphetamine [h]ydrochloride (shabu) without the necessary permit or authority to transport the same" in violation of Section 15, Article III of R.A. 6425 as amended by R.A. 7659.

At his arraignment on 31 July 1995, CHUA entered a plea of not guilty. The RTC was satisfied that CHUA understood the amended information read to him in Fukien by the Fukien-speaking interpreter, Thelma Sales Go.

Thereafter, the RTC exerted all efforts to obtain the services of a Taiwanese Interpreter through the auspices of the Department of Foreign Affairs. However, it was only after directing the request to the Taipei Economic and Cultural Office in the Philippines that interpreters were assigned to CHUA.

Trial finally ensued. The State presented evidence tending to establish the above narration of facts which were culled chiefly from the testimony of CID, its first witness, and whose testimony, in turn, was substantially corroborated by witnesses BADUA and ALMOITE.

Expert witness Theresa Ann Cid, confirmed the entries of her chemistry report in that the contents of the 29 plastic packets weighing 28.7 kilos sent to her for chemical analysis were pure, unadulterated methamphetamine hydrochloride or shabu. She also explained that they were unwashed, hence they appeared yellowish.

For the defense, CHUA testified in his own behalf through interpreter Steven Yu. He disclosed that he hails from Taiwan and was employed in a shipbuilding and repairing company. On 21 March 1995, he was instructed by his employer Cho Chu Rong (hereafter RONG) to board the latter's 35-tonner ship which would embark for Nan Au Port, Mainland China where they would buy fish. Upon arrival at their destination, RONG left the ship, came back without the fish, but with two bags, the contents of which he never divulged to CHUA. RONG then showed to CHUA a document purportedly granting them authority to fish on Philippine waters. So they sailed towards the Philippines and reached Dagupan, Pangasinan on 29 March 1995. At around 10:30 a.m., they disembarked on a small speedboat with the two bags RONG brought with him from China. While sailing, RONG made several phone calls using his mobile phone. CHUA heard RONG asked the person on the other side of the line if he could see the speedboat they were riding. Apparently, the person on shore could not see them so they cruised over the waters for about five hours more when finally, low on fuel and telephone battery, they decided to dock. CHUA anchored the boat while RONG carried the bags to shore. The tasks completed, RONG left to look for a telephone while CHUA rested and sat one and half (1 1/2) meters away from one bag. A child thereafter pointed out to him that one bag was missing much to RONG's dismay when he learned of it. When a crowd started to mill around them, the police arrived. CHUA then realized that RONG was nowhere to be found. The police immediately approached CHUA, and with nary any spoken word, only gestures and hand movements, they escorted him to the precinct where he was handcuffed and tied to a chair. Later, the police, led by an officer who CHUA guessed as the Chief of Police arrived with the motor engine of the speedboat and a bag. They presented the bag to him, opened it, inspected and weighed the contents, then proclaimed them as methamphetamine hydrochloride.

CHUA denounced the prosecution's story as a distortion of the truth. He denied he was ever favored with an interpreter or informed of his "constitutional rights," particularly of his right to counsel. Consequently, his arrest was tainted with illegality and the methamphetamine hydrochloride found in the bag should have been regarded inadmissible as evidence. He also maintained that CID never graced the occasion of his setting foot for the first time at Tammocalao beach. BADUA certainly never prevented him from running away, as such thought failed to make an impression in his mind. Most significantly, he denied ownership and knowledge of the contents of the bag, emphasizing that RONG alone exercised dominion over the same.

Elmer Parong, (hereafter PARONG) a Sangguniang Bayan member, recalled that on the date in question, he arrived at the beach with the police. He saw CHUA standing with a bag beside him. He also remembered hearing from the people congregating at the beach that CHUA arrived with a companion and a certain policeman Anneb had chased the latter's car. He additionally claimed that when the crowd became unruly, the police decided to bring CHUA to police headquarters. There, the mayor took charge of the situation -- he opened CHUA's bag with the assistance of the

police, he called for a forensic chemist surnamed CID to take a sample of the contents of the bag, and he ordered his officials to find an interpreter. Throughout the proceedings, photographers were busy taking pictures to document the event.

Last to testify was Arsenio CRAIG, a farmer and resident of Tammocalao who narrated that he was standing with CHUA on the beach when two men and a lady arrived. They were about to get a bag situated near CHUA when they detected the arrival of the local police. They quickly disappeared. CRAIG then noticed ALMOITE and PARONG at the beach but not CID.

In a decision promulgated on 10 February 1997, the RTC found that the prosecution successfully discharged its burden of proving that CHUA transported 28.7 kilos of methamphetamine hydrochloride without legal authority to do so. Invoking *People v. Tagliben*^[5] as authority, the RTC characterized the search as incidental to a valid *in flagrante delicto* arrest, hence it allowed the admission of the methamphetamine hydrochloride as *corpus delicti*. The RTC also noted the futility of informing CHUA of his constitutional rights to remain silent, and to have competent and independent counsel preferably of his own choice, considering the language barrier and the observation that such irregularity was "rectified when accused was duly arraigned and ... (afterwards) participated in the trial of this case." The RTC then disregarded the inconsistencies and contradictions in the testimonies of the prosecution witnesses as these referred to minor details which did not impair the credibility of the witnesses or tarnish the credence conferred on the testimonies thus delivered.

The RTC also believed that CHUA conspired not only with his alleged employer RONG and the Captain of the 35-tonner vessel in the illegal trade of prohibited drugs on Philippine shores, but with several other members of an organized syndicate bent on perpetrating said illicit traffic. Such predilection was plainly evident in the dispositive portion, to wit:

WHEREFORE, and in view of all the foregoing, as proven and established by convincing and satisfactory evidence that the accused had conspired and acted in concert with one Cho Chu Rong, not to mention Chen Ho Fa, the Skipper of the 35-tonner ship they used in coming to the Country from China and Taiwan, this Court finds the accused Chua Ho San @ Tsay Ho San guilty beyond reasonable doubt of the offense of Violation of Sec. 15, Art. III of R.A. No. 6425, as amended by R.A. No. 7659 as charged in the Information, and considering the provisions of Sec. 20 of R.A. No. 7659 that the maximum penalty shall be imposed if the quantity sold/possessed/transported is '200 grams or more' in the case of Shabu, and considering, further that the quantity involved in this case is 28.7 kilograms which is far beyond the weight ceiling specified in said Act, coupled with the findings of conspiracy or that accused is a member of an organized syndicated crime group, this Court, having no other recourse but to impose the maximum penalty to accused, this Court hereby sentences the said accused Chua Ho San @ Tsay Ho San to die by lethal injection; to pay a fine of Ten Million Pesos (P10,000,000.00); and to pay the costs.

The Court hereby orders Director Ricareido [*sic*] Sarmiento of the Philippine National Police to immediately form an investigating Committee to be composed by [*sic*] men of unimpeachable integrity, who will

conduct an exhaustive investigation regarding this case to determine whether there was negligence or conspiracy in the escape of Cho Chu Rong and the two (2) or three (3) persons who approached the accused in the seashore of Tammocalao, Bacnotan, La Union, and attempted to take the remaining bag from accused, as well as the whereabouts of the other bag; and to furnish this Court a copy of the report/result of the said investigation in order to show compliance herewith sixty (60) days from receipt hereof.

The confiscated 28.7 kilograms of Methamphetamine Hydrochloride or Shabu is ordered turned over immediately to the Dangerous Drugs Board for destruction in accordance with the law.

The fiberglass boat with its motor engine is hereby ordered confiscated in favor of the government and to be turned over to the Philippine National Police, La Union Command, for use in their Bantay-Dagat operations against all illegal seaborne activities.

SO ORDERED.^[6]

Before this Court, CHUA posits that the RTC erred in (1) admitting as competent evidence the 29 plastic packets of methamphetamine hydrochloride since they were indubitably "forbidden fruits;" (2) granting weight and credence to the testimonies of prosecution witnesses despite glaring inconsistencies on material points; and in (3) appreciating conspiracy between him and an organized syndicate in the illicit commerce of prohibited drugs since this was not alleged in the information.

The Solicitor General traverses CHUA's contentions by asserting that: (1) the search was licitly conducted despite the absence of search and seizure warrants as circumstances immediately preceding to and contemporaneous with the search necessitated and validated the police action; and (2) that there was an effective and valid waiver of CHUA's right against unreasonable searches and seizures since he consented to the search.

We reverse the RTC.

Enshrined in the Constitution is the inviolable right to privacy of home and person. It explicitly ordains that people have the right to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose.^[7] Inseparable, and not merely corollary or incidental to said right and equally hallowed in and by the Constitution, is the exclusionary principle which decrees that any evidence obtained in violation of said right is inadmissible for any purpose in any proceeding.^[8]

The Constitutional proscription against unreasonable searches and seizures does not, of course, forestall reasonable searches and seizure. What constitutes a reasonable or even an unreasonable search in any particular case is purely a judicial question, determinable from a consideration of the circumstances involved.^[9] Verily, the rule is, the Constitution bars State intrusions to a person's body, personal effects or residence except if conducted by virtue of a valid search warrant issued in compliance with the procedure outlined in the Constitution and reiterated in the