

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ZHENG BAI HUI @ CARLOS TAN TY AND NELSON HONG TY @ SAO
YU, ACCUSED-APPELLANTS.**

G.R. No. 127580. August 22, 2000

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

For the sale of methamphetamine hydrochloride, otherwise known as “shabu,” Zheng Bai Hui alias Carlos Tan Ty and Nelson Hong Ty alias Sao Yu were sentenced by the Caloocan City Regional Trial Court to suffer the death penalty. Their case is now before this Court on automatic review.

Appellants were charged in an information stating:

That on or about the 24th day of October 1994 at Kalookan City, Metro-Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, conspiring together and mutually helping with one another, did then and there wilfully, unlawfully and feloniously sell and deliver to SPO1 GILBERT G. SANTOS who posed as buyer, One (1) blue plastic bag labelled “SM Shoemart” containing one (1) piece of newsprint with one (1) transparent plastic bag containing yellowish crystalline substance “METHAMPHETAMINE HYDROCHLORIDE” (Shabu) and having a weight of 992.30 grams, a regulated drugs, knowing the same to be such.

CONTRARY TO LAW.[1]

Arraigned on November 4, 1994, appellants pleaded not guilty to the above charges. Trial ensued thereafter.

The

prosecution’s version, as pieced together from the testimonies of witnesses SPO3 Gilbert Santos,[2] SPO1 Gerico Bacani,[3] PO2 Elleonito Apduhan[4] and PO3 Noel Castañeto,[5] is as follows:

In the morning of October 24, 1994, a police informant code-named “Stardust” arrived at the Narcotics Command (NARCOM) in Camp Ricardo Papa, Bicutan, Taguig, and informed Police Sr. Insp. Franklin Moises Mabanag of two Chinese nationals who were supposedly “big time” drug pushers. She claimed to have regular contact with one of the alleged drug pushers, a certain Carlos Tan Ty. Stardust, the informant, was a woman who had previously provided the police with information that led to the confiscation of one (1) kilo of shabu.

Acting on the information furnished by Stardust, the NARCOM agents organized a buy-bust operation to apprehend the reputed drug pushers. Stardust called up Carlos Tan Ty that same morning and introduced SPO3 Gilbert Santos over the cellular phone. Pretending to be a “pusher-buyer” in Parañaque, SPO3 Santos told Carlos that he was willing to buy shabu if Carlos had any stock. Carlos replied that they had stock that was yellow in color. SPO3 Santos and Carlos subsequently reached an agreement for the former to buy from the latter one (1) kilo of shabu for P500,000 and to meet at the Mercury Drug Store in Monumento later that afternoon. Carlos

would bring the shabu and SPO3 Santos the money. Carlos informed SPO3 Santos that he would be wearing a striped T-shirt and that he would be bringing with him a companion. Per Carlos' instructions, SPO3 Santos would come alone.

SPO3 Santos and Police Sr. Insp. Mabanag then prepared the "boodle money" consisting of seven (7) bundles of newspaper cuttings[6] that was supposed to represent the P500,000 purchase money. A genuine P500 bill[7] was placed on top of one of the bundles and another P500 bill[8] at the bottom of the same bundle. SPO3 Santos initialed the red portion of the Philippine flag in each of the bills.[9] Between the bills were the newspaper cuttings. The bundles, each about three (3) inches thick, were wrapped with straps from the United Coconut Planters Bank and tied with a rubber band. The boodle money was then placed in plastic[10] and sealed with scotch tape.[11] SPO3 Santos rehearsed how he would show the drug pushers the boodle money.

The police held a briefing and formed a team led by Inspector Rolando Ibañez. The members of the team included SPO3 Santos, SPO1 Gerico Bacani, PO3 Elleonito Apduhan, PO1 Noel Castañeto, and a certain SPO1 Juspid. SPO3 Santos was designated poseur-buyer and SPO1 Apduhan, his backup. The team then proceeded to the meeting area for reconnaissance.

SPO3 Santos and the rest of the buy-bust team, dressed in civilian attire, arrived at the Mercury Drug Store at the corner of Edsa, Monumento, Caloocan City later that afternoon. SPO3 Santos and Stardust waited inside the Mercury Drug Store while the other agents strategically positioned themselves several meters from the store, where the suspects could not spot them.

The suspects arrived at around 6:00 in the evening. Stardust pointed to SPO3 Santos two (2) Chinese nationals, later identified as the accused, alighting from a tax. SPO3 Santos stepped out of the store and introduced himself to the two (2) Chinese nationals as the person whom they talked with over the phone that morning. He told the suspects that he brought the money with him, and showed the accused the boodle money by opening the wrapper and showing half of the bundle with the P500 bill on top. He then gave the money to one of the Chinese nationals, later identified as the accused Carlos Tan Ty. The latter's companion, later identified as accused Nelson Hong Ty, in turn handed SPO3 Santos a blue plastic bag[12] with the marking of "SM" or "Shoemart." The two looked at the money while SPO3 Santos opened the bag handed to him by Nelson Hong Ty. SPO3 Santos found a yellowish substance[13] sealed in transparent plastic and wrapped in newspapers. The accused identified the substance as shabu. Thereupon, SPO3 Santos held Carlos by the hand as the other members of the team came to help him effect the arrest of the two suspects, who were later brought to Camp Crame, Quezon City.

After the buy-bust operation, SPO3 Santos, PO3 Bacani and PO3 Apduhan placed their respective signatures[14] on the SM plastic bag, the newspaper wrappings and the transparent plastic containing the substance. The yellowish substance, together with its wrappings, was then delivered by SP01 Noel Castañeto to the Crime Laboratory of the Philippine National Police (PNP). The boodle money was handed over to the property custodian.

Leslie Maala,[15] a forensic chemist from the PNP, received a letter-request[16] from Police Sr. Insp. Franklin Moises Mabanag to conduct a laboratory examination on the substance taken from the accused. Ms. Maala took random samples of about one (1) gram from different parts of the substance and, per their standard operation procedure, performed physical, chemical and confirmatory examinations thereon. The physical examination consisted of weighing the entire substance. The chemical examination, in turn, consisted of the Simons test and the Marquis' test. Thence, a thin layer chromatography test was performed. The examinations were supervised by the Chief of the Chemistry Division.

From the examinations thus conducted, Ms. Maala concluded that the sample was positive for methamphetamine

hydrochloride. The results of Ms. Maala's examination were reflected in her initial (Chemistry Report No. 0-793-94 dated October 25, 1994),^[17] as well as in her final (Physical Sciences Report D-793-94 of even date)^[18] report. The final report states that the entire substance weighed 992.3 grams.

The accused, in their defense, countered that no buy-bust operation took place. They denied selling any shabu and accused the police of extortion.

Accused Carlos Tan Ty,^[19] 38, described himself as married and engaged in the business of buying and selling lumber and furniture. At the time of his testimony, he had been staying in the Philippines for more than ten years, although sometimes he would go home to Mainland China. Previously, he owned a sawmill business in Malanday but shifted to the furniture business in 1987, with Peter Chua and Nestor Lim as his partners. Their office is located in Karuhatan near a gasoline station along the MacArthur Highway. Their customers include Arenas Furniture and Unicorn Furniture. The business is not registered in Carlos' name, however, since he is a Chinese citizen.

Accused Nelson Hong Ty,^[20] 24, and originally from Fuchu, China, had been residing in the Philippines for around seven (7) years before his arrest. Though not licensed or authorized to work in the country, Nelson was employed as a factory worker and electrician in Everwood Furniture, a business owned by one Jessie Cua and located in Lincoln Street, Malinta, Valenzuela.

Testifying with the aid of an interpreter,^[21] they narrated their account of the events that transpired on October 24, 1994.

That afternoon, Carlos was in Everwood Furniture in Lincoln Street, Malinta conducting some business with the shop owner when Nelson, an employee there, entered the office. Nelson had just come from the factory and had gone to the Everwood office in Malinta to report to his boss. Nelson asked how Carlos' business was going. Carlos replied that it was okay. Seeing it was almost 5:00 p.m., Carlos asked Nelson if he was done working. Nelson replied, "Yes, my work is finished," and that he was in fact on his way home. Carlos told him that he was supposed to meet a customer, a certain Chua Ping, in Monumento to take some orders. Carlos offered to bring Nelson home to the latter's house in Navotas if Nelson was willing to wait.

Earlier that afternoon, Chua Ping called up Carlos and said he needed lumber and plywood for his new house. He wanted to meet with Carlos in Monumento so Chua Ping's carpenter could give Carlos a list of the lumber he needed. He told Carlos to meet him between 5:00 and 6:00 p.m. at a restaurant located at the ground floor of No. 316, Monumento, along Edsa.

Nelson took Carlos' offer to take him home and rode with Carlos to Monumento in Carlos' car, a red Toyota. Upon arriving in Monumento at around 6:00 p.m., Carlos parked his car in front of the Prudential Bank. A boy even offered to clean the car.

The two walked along EDSA to meet Chua Ping. They were about 15 arms-length from the car when they were suddenly accosted by eight men. Carlos and Nelson asked what was happening. The men, who were in civilian attire, shoved Carlos and Nelson into a red Nissan Sentra. The two were not able to shout for help.

Inside the car, Carlos was blindfolded.

Carlos and Nelson were then taken to the Anito Hotel in Monumento and brought to separate rooms.

Once inside the hotel room, Carlos was ordered to face the wall. His blindfold was removed but he was boxed every time he looked at the men. The men frisked him, seized his wallet and took therefrom cash amounting to P78,000. His license, cellular phone, pager and watch were also taken from him.

Carlos' captors sat him on the bed and one of them (a policeman, according to Carlos) asked him questions like what business he was engaged in. Carlos tried to answer the man's questions but they could not understand him. They got mad and boxed him.

An hour later, a Chinese-speaking man armed with a gun entered the room. Carlos pleaded with the man to help him since he did not know why he was arrested. The man asked him if he had any money. He said Carlos must have money since he had a business. The man offered to help him in exchange for P500,000. If Carlos would not give the money, the man warned, he would not arrange with the police for a settlement; Carlos "might [even] be thrown in Marikina." Carlos told the man that he did not have that kind of money. He said that with the help of his friends he could raise only P50,000. The interpreter told Carlos to wait for him and he will talk to the policemen.

Nelson was also brought to one of the hotel rooms and instructed to sit on the bed. Two men were in the room with him. After an hour, a person who knew how to speak Chinese entered the room. The man, who did not identify himself, carried a firearm. He demanded P50,000 from Nelson, otherwise, the man warned, something bad will happen to him. "Papatungan ako ng kaso," Nelson said in court. Nelson told the man, "I am just working. Where can I get such a big amount?"

Carlos and Nelson were then brought to their captor's vehicles. Carlos was handed his cellular phone so he could call up friends or relatives who could help him produce the sum of P200,000. Carlos attempted to call them up but there was no reply.

Riding in separate vehicles, Carlos and Nelson were brought to the latter's house in Navotas between 9:00 and 9:30 p.m. Nelson and some of the policemen went inside the house while Carlos remained in the car. The men took Nelson's clothes, an electric fan, a gas stove, and a round plastic table from the house, and loaded them into the car.

The Chinese-speaking man asked Carlos if he was married. Carlos told him he was. The man informed him that they would next go to Carlos' house. He instructed Carlos to tell his wife to borrow from her friends the money they demanded.

Carlos and his captors arrived at his house at around 11:00 p.m. Carlos' wife answered the door. Four (4) of the men accompanied Carlos into the house, one of them holding him by the shirt. Carlos told his wife that his companions were policemen who arrested him "because of the lumber," and were now demanding P200,000 from him. Carlos added that he had left his car in Monumento. Carlos' captors then brought him back to their car. From the car, Carlos saw his wife ride in one of the policemen's vehicles. Carlos was told that his wife was going to see her friends.

The vehicle Carlos was riding proceeded to Karuhatan when one of the policemen received a message from a pager, and the group transferred to the BB gasoline station. They stayed there for 15 to 20 minutes until the policeman received another message from his pager. They drove to Monumento when a hand from another vehicle signaled them to stop. They proceeded to Camp Crame thereafter.

At Camp Crame, Carlos and Nelson were placed in handcuffs. Later in the evening of October 25, 1994, they were provided with a piece of paper with some writings. The two were made to sign the paper and place their thumb marks thereon. They told Carlos that he would be released lunchtime the next day, October 26, when his wife brought the money they demanded. Nelson was given the same assurance of release.

Carlos and Nelson were not released the following day, however. At around 11:00 a.m., October 26, Carlos and Nelson were presented to the media.

Carlos' common-law wife, May Ann Ty, testified to corroborate the accused's testimony. Mary Ann and Carlos have been living together since 1989, and have three children. According to Mary Ann, appellant has been engaged in the furniture business since 1989.

Mary Ann testified that between 11 in the evening of October 24, 1994 and 12 midnight the next day, Carlos, along with a group of about six (6) men in civilian attire arrived at the couple's residence. They asked her if she knew Carlos. "Yes," Mary Ann replied, and inquired what they needed from him. She also asked the men who they were but they did not say anything. (In court, Mary Ann identified one of them as "Abduhan," apparently referring to PO3 Elleonito Apduhan, one of the agents who testified against the accused.) The group informed her that Carlos "was arrested in connection with the woods." It occurred to Mary Ann that appellant was arrested "perhaps [because] he was able to buy woods without receipts." The men demanded that Mary Ann produce the sum of P200,000, or else "something bad will happen to [Carlos]." They told her that they would return at 2:30 in the morning. Before they left, the men searched the house and took her baby's thermos and the batteries of a cellular phone.

After the men left, Mary Ann changed her clothes and woke up her brother so that he could accompany her to borrow the money. One of her friends, a certain John Ang, subsequently promised to lend her P130,000 through his secretary who would bring the money to Karuhatan. Mary Ann returned home at past one in the morning and waited.

Two of the men returned at about 5:00 that same morning. Two minutes later, Carlos entered the room, pushed by one of the men. "What will you do to me?" Carlos asked in broken Tagalog. The man replied by ordering him, "Bumalik ka na sa kotse."

The men then told Mary Ann to go with them so they could get the money from John Ang's secretary. Mary Ann thus rode with the men in a white vehicle. She decided to go with them alone since her relatives were busy. The vehicle first proceeded to Maysilo, Bulacan and then to Karuhatan, Valenzuela where Mary Ann received \$4,000 and P30,000 in cash from John Ang's secretary. Back in the car with the money, Mary Ann asked the men where her husband was. They told her she would see her husband when she went home before sunset.

Mary Ann then asked to whom should she give the money. They replied, "Of course for us," and the man to her left immediately grabbed it from her. They kept on uttering words to the effect that "something bad will happen to [her] husband." They said they planned to bring her husband to the doctor for a check-up so in case the couple filed a complaint, there would be no proof that anything happened to him. The men dropped Mary Ann off along Karuhatan in MacArthur Highway. Mary Ann jotted down the plate number of the men's white car then went home to Valenzuela.

The men did not return Carlos home despite their assurances. Mary Ann's father managed to trace the whereabouts of her husband through the vehicle's plate number. When Mary Ann went to Camp Crame in the afternoon of October 25, 1994 to inquire about her husband, she saw the same white car parked in front of one of the offices. The vehicle bore the same plate number as the one the men brought with them.

The night the men came, Mary Ann learned from Carlos that he left his car in front of the Prudential Bank at the Monumento Circle. Mary Ann was able to retrieve the car, a Toyota, two days after Carlos' arrest, or on October 26, 1994, at past eight in the morning. When she went to recover the car, a teenaged boy approached her and asked her if she owned the car. "Yes," she replied.[22]

Norlito Dotimas, 18, and a resident of Bagong Barrio, Caloocan City was the teenaged boy from the parking lot. Presented as a witness for the defense, Norlito testified that since April 1994 he had been earning a living

guarding and washing cars parked in the Prudential Bank. The bank is beside the Mercury Drug Store in front of the Monumento in Caloocan. Norlito works in the parking lot from eight in the morning to seven in the evening.

Norlito narrated that at about 5:30 in the afternoon of October 24, 1994, a red car arrived at the Prudential Bank parking lot. Two men, who later turned out to be the accused, alighted from the car. Norlito offered “the tall guy,” referring to accused Carlos Tan Ty, to watch and wash the latter’s car. Carlos agreed and walked on. Norlito stared at the two men as they left, wondering whether they were Chinese or Japanese. Norlito said that the men were not carrying anything with them.

Norlito had just started washing the back of Carlos’ car when he saw that the two men, then about ten (10) meters away, were “pinagkakaguluhan.” The taller man (Carlos) was held by the collar and then pushed into the car. The smaller one (Nelson) was poked with a gun on his right temple, handcuffed and also forced into the car.

At around 8:00 a.m. the next day, October 25, 1994, someone took Carlos’ car from the Prudential Bank parking lot. Norlito was not able to charge for watching and washing that car, however, since he was busy washing another.

Norlito admitted that he was requested by Maryann Ty, whom he first met on December 9, 1994 in the Prudential Bank parking lot, to testify regarding her husband’s disappearance. Norlito agreed to testify, and Mary Ann promised to pay him P200, the equivalent of his daily earnings.[23]

The defense also offered the testimony of Sr. Insp. Franklin Moises Mabanag, who was presented as a hostile witness. Sr. Insp. Mabanag was the chief of the Second Operation Group-Special Operation Unit of the NARCOM when the accused were arrested. He testified to certain aspects of the buy-bust operation that led to the arrest of the accused.

(1) At the time he testified, Sr. Insp. Mabanag had known Stardust for more than two (2) years, having first met her in the place where she worked nightly. He eventually convinced her to work with them, and gave her the code-name “Stardust.” Sr. Insp. Mabanag declined to divulge Stardust’s real name in court “for security reasons.” He revealed, however, that Stardust was neither a drug pusher nor a drug user; she did not have any arrest record. She was usually given cash as “incentive” for the information she provided; Sr. Insp. Mabanag, though, could not remember how much he gave her in this case. He described Stardust’s participation in the operation as “indispensable.”

(2) The first time Sr. Insp. Mabanag first heard about Carlos Tan Ty was when Stardust reported on October 24, 1994 that the accused was actively engaged in the business of selling shabu. They conducted a backgrounder on the accused, and their investigation yielded several persons with the same name as Carlos Tan. They could not verify, however, if any one of these persons was actually the accused Zheng Bai Hui.

(3) The accused were immediately brought to Camp Crame after their arrest. Sr. Insp. Mabanag prepared a spot report, which he submitted to Supt. Charles Galinan, chief of the NARCOM Special Operation Unit. The buy-bust operation was not only reflected in said spot report but also in a pre-operation report prepared by Sr. Insp. Mabanag before the operation, and in a logbook containing the details thereof. Not all the entries in the pre-operation report, such as the denominations of the bills used as boodle money, were entered in the logbook, however. Sr. Insp. Mabanag claimed they did not maintain a police blotter since they were a special operation unit.

(4) Sr. Insp. Mabanag denied that his operatives demanded money from the accused in exchange for the latter’s release.[24]

The defense also presented, as hostile witnesses, SPO3 Gilbert Santos, PO3 Elleonito Apduhan and PNP forensic chemist Leslie Maala, all of whom previously testified for the prosecution.

The testimony of SPO3 Santos yielded the following additional information:

- (1) The serial numbers and the denominations of the genuine money used in the buy-bust operation were not recorded in their police logbook, since their Commanding Officer said it was no longer necessary. They did not place any fluorescent powder on the boodle money.
- (2) He had never met either of the accused before their arrest nor did he have any record or any “A-1 information” regarding them.
- (3) They did not conduct a “test-buy” or a surveillance of the activities of the accused to determine the veracity of the information Stardust had provided.
- (4) They were not armed with a warrant when they effected the arrest of the accused.[25]

PO3 Elleonito Apduhan also testified that he did not know any of the accused before their arrest. He confirmed that no test buy was conducted by their office. He denied having gone to the house of accused Carlos Tan Ty and demanding money from the latter’s wife.[26]

Leslie Maala, for her part, expounded on the examinations she conducted on the subject substance. Quite pertinently, she testified that the tests she performed, namely, the Simons test, the Marquis’ test and the thin layer chromatography, are qualitative, not quantitative tests. They are not designed to determine the purity of the specimen. Ms. Maala admitted she never conducted any quantitative test on the substance since there was no request for such an examination.[27]

The trial concluded, Judge Adoracion Angeles of the Caloocan City Regional Trial Court, Branch 121, rendered a decision convicting both accused thus:

WHEREFORE, premises considered, the accused ZHENG BAI HUI a.k.a. CARLOS TAN TY and NELSON HONG TY a.k.a. SAO YU are hereby found GUILTY beyond reasonable doubt of the offense of Violation of Section 15, Article III, RA 6425 in relation to Section 21-B of the same Act and each is accordingly sentenced to suffer the penalty of DEATH and to pay a fine of TEN MILLION PESOS (P10,000,000.00). With costs.

SO ORDERED.[28]

The case is now before this Court for automatic review.

Appellants, in the brief filed by Atty. Nestor Ifurung, contends:

- I. That the trial court erred in depriving the accused of the prized ideal of ‘the cold neutrality’ of an impartial judge as part of procedural process. It assumed the role of the prosecutor and judge in the case, and further unduly and arbitrarily curtailed the right of the accused on the cross examination of the witnesses against them.
- II. That the trial court erred in giving credence to the so-called “buy-bust” story of the prosecution despite the unmistakable hallmarks of fabrication thereof, and corollarily, in concluding that both accused were caught in flagrante delicto in the act of selling methamphetamine hydrochloride to a police poseur buyer.
- III. That the trial court erred in refusing disclosure of the identity of and putting on the witness stand the alleged confidential informant who supposedly arranged the buy-bust that led to the arrest of both accused, and thereby, infringing upon the fundamental right of the accused to confront and cross-examine a material witness against them.

IV. That the trial court erred in convicting both accused on the basis of the evidence of the prosecution showing they were the victims of police instigation, which entitles them to acquittal.

V. That the trial court erred in imposing upon the accused the capital penalty of death despite the absence of expert evidence on the percentage of the pure quantity of the alleged shabu sued upon called for in Resolution No. 3, dated March 8, 1979 of the Dangerous Drugs Board, and of Sec. 16, Art. III, of RA 6425.[29]

Appellant Nelson Hong Ty, in whose behalf Atty. Leven Puno filed another brief, assigns similar errors on the part of the trial court:

I THE TRIAL COURT COMMITTED A GRAVE ERROR WHEN IT KNOWINGLY DEPRIVED THE ACCUSED OF THE “COLD NEUTRALITY” OF AN IMPARTIAL JUDGE AS A PART OF THEIR RIGHT TO PROCEDURAL PROCESS.

II THE TRIAL COURT COMMITTED A GRAVE ERROR IN GIVING FULL FAITH AND CREDIT TO THE “BUY-BUST” STORY OF THE POLICE OFFICERS.

III THE TRIAL COURT COMMITTED A GRAVE ERROR IN FINDING AND CONCLUDING THAT BOTH ACCUSED WERE CAUGHT IN FLAGRANTE DELICTO IN THE ACT OF SELLING METHAMPHETAMINE HYDROCHLORIDE TO A POSEUR BUYER.

IV THE TRIAL COURT COMMITTED A GRAVE ERROR IN REFUSING DISCLOSURE OF THE IDENTITY AND REFUSING TO PUT ON THE WITNESS STAND THE ALLEGED CONFIDENTIAL INFORMANT WHO ALLEGEDLY ARRANGED THE BUY-BUST DRAMA THAT LED TO THE ARREST OF BOTH ACCUSED. THERE WAS DENIAL BY THE TRIAL COURT THE RIGHT OF THE ACCUSED TO CONFRONT AND CROSS-EXAMINE A WITNESS AGAINST THEM.

V THE TRIAL COURT COMMITTED A GRAVE ERROR IN CONVICTING BOTH ACCUSED AND SENTENCING THEM TO THE CAPITAL PUNISHMENT OF DEATH DESPITE THE FACT THAT THEIR GUILT HAS NOT BEEN PROVED BEYOND REASONABLE DOUBT. UNDER THE LAW THEY ARE ENTITLED TO AN ACQUITTAL ON THE GROUND OF REASONABLE DOUBT.[30]

In his supplemental brief, appellant Nelson Hong Ty adds that:

1. THE TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RENDERING THE ASSAILED DECISION BASED PARTLY ON THE TESTIMONY OF A WITNESS WHO THROUGH INADVERTENCE WAS NOT SWORN, BEFORE TESTIFYING FOR THE PROSECUTION.

2. THE COURT ERRED IN CONVICTING THE ACCUSED BEYOND REASONABLE DOUBT.[31]

The arguments raised by appellants may be reduced to the following issues:

- (1) Whether the failure of a prosecution witness to take his oath invalidates the proceedings before the trial court.
- (2) Whether appellants were denied their right to an impartial and disinterested tribunal.
- (3) Whether the refusal of the trial judge to allow disclosure of the identity of the informer deprived appellants of their right to confront and cross-examine said witness.
- (4) Whether the prosecution proved appellants' guilt beyond reasonable doubt.
- (5) Whether the death penalty should be imposed upon appellants.

I

Appellant Nelson Hong Ty argues that the failure of SPO1 Jerico Bacani to take an oath before he testified deprived the accused of their right to due process. It is contended that they are entitled to a new trial.

That SPO1 Bacani, a witness for the prosecution, did not take an oath before his testimony is undisputed. The omission appears to have been brought about by circumstances starting from the hearing of November 14, 1994. SPO3 Gilbert Santos was testifying on cross-examination when Atty. Leven Puno, counsel for the defense, moved for a continuance.[32] The trial court granted counsel's motion.[33] At the start of the next hearing, on November 17, 1994, the prosecutor called on SPO1 Jerico Bacani as a witness[34] notwithstanding SPO3 Santos' unfinished testimony. Atty. Puno objected and reminded the court that he was still cross-examining SPO3 Santos.[35] In response, the prosecutor informed the court that SPO3 Santos was not present in the courtroom[36] despite notice.[37] After some discussion between the court and counsel for the respective parties,[38] Atty. Puno acceded to continue the cross-examination of SPO3 Santos at a subsequent date.[39] The court even dictated an order to that effect.[40] The prosecutor then offered the testimony of SPO1 Bacani,[41] and conducted the direct examination, without the witness having first taken an oath. Neither did SPO1 Bacani take an oath at the continuation of his testimony on November 23, 1994.

The failure of a witness to take an oath prior to his testimony is a defect that may be waived by the parties.[42] Appellant Nelson Hong Ty concedes to this rule.[43] He asserts, however, that he did not waive his right to object to the lack of oath, since the inadvertence was discovered only after the judgment of conviction by the trial court when counsel was preparing the brief for automatic review by this Court. As authority for this argument, appellant cites *Langford v. United States*,[44] where the Court of Appeals of the Indian Territory declared that:

x x x it would seem that knowledge or want of knowledge [of the lack of oath] is the true test in this class of cases. In a note to section 264b of Wigmore's Edition (16th) of Greenleaf on Evidence the following appears: "Whether he may [have a new trial] if a witness on the other side, testified without having been sworn at all quære? If the omission of the oath was known at the time, it seems he cannot; but, if it was not discovered until after trial, he may." Mr. Thompson, in his work on Trials (volume 1, § 365) says: "It is the duty of the party calling the witness to see that he is sworn, though, if the oath is inadvertently omitted, the objection will not be good after verdict;" but at once adds, "The objection must be made as soon as it is discovered, or it will be deemed waived." x x x.

Langford makes reference to the following excerpt in *Hawks v. Baker*,[45] also cited by appellant:

It is the duty of the counsel offering a witness to move that he may be sworn, and thus be qualified to testify. * * * Thus far the counsel for the opposite party has no concern with the transaction. He has a right to presume that the person taking the stand in the character of a witness has been duly sworn. Of course, his omission to inquire and ascertain the fact cannot be considered as any waiver of his right to object to the incorrectness of the proceeding if the person supposed to be sworn was in fact never sworn. No man can be considered waiving a right which he is unconscious of possessing. * * * The defendant has not had a trial of his cause on legal evidence, but partly on that which is illegal.

Langford states that "knowledge or want of knowledge is the true test" in determining whether there was a waiver of the lack of oath. We find, however, that this test would open the door to fraud since any party can claim want of knowledge of the defect before verdict is rendered. Such a claim would be exceedingly difficult to verify. We believe that the better test would be not whether a party had knowledge of the lack of oath but whether he had the opportunity to know of the lack of oath. If a party ought to have known of the lack of oath but did not object thereto, he cannot later be heard raising such an objection. Thus, in *State v. Embrey*,[46] the Supreme Court of

New Mexico held:

The testimony or declarations of any unsworn person, given or made in the presence of the trial judge and of the parties and their attorneys, under such circumstances that they knew or should have known what the unsworn individual was doing and saying, may be considered by the jury as that of any sworn witness. Where no objection is promptly made to such a proceeding, it is too late to urge the objection on motion for new trial. (Italics supplied.)

In the case at bar, defendant and his counsel were present at the hearing of November 17, 1994 when SPO1 Bacani was presented as a witness. They did not, however, object to the lack of oath. Nor did they pose any objection when SPO1 Bacani continued his testimony on November 23, 1994; Atty. Puno even cross-examined the witness. In *State v. Doud*,^[47] the Supreme Court of Oregon had occasion to rule that:

If the defendant had wished that the x x x witness should have been sworn, he should have been observant and should have mentioned the matter in the trial court. We are certain that had the matter then been mentioned an appropriate oath would have been administered. In all likelihood, it would have produced no different effect, for all thought that an oath had been administered. It is now too late to present the objection. This assignment of error is dismissed as lacking in merit.

So we hold in this case.

In any event, the granting of a new trial because of said omission would be pointless because even if testimony of SPO1 Bacani were excluded, it would not materially affect the totality of the evidence for the prosecution. His testimony is merely corroborative of those of SPO3 Gilbert Santos, PO2 Elleonito Apduhan and PO3 Noel Castañeto and could therefore be dispensed with, without affecting the prosecution's case or prejudicing that of the defense.

II

Appellants also contend that they were deprived of their right to the cold neutrality of an impartial judge, and attempt to establish a pattern of partiality on the part of RTC Judge Adoracion Angeles.

First, they assert that the judge "actively assumed the role of the prosecutor"^[48] in the examination of Norlito Dotimas. Norlito, the "watch-your-car boy," testified that appellants did not arrive in a taxi but in a car driven by appellant Carlos Tan Ty. In resolving this argument, it would be helpful to examine the entire transcript of Norlito's cross-examination and the circumstances surrounding the questioning appellants find so objectionable.

The prosecutor began the cross-examination by asking the witness who requested him to testify. Norlito answered that it was Mary Ann Ty, the wife of appellant Carlos Ty. Asked when he was requested to testify, Norlito replied he could not remember. The prosecutor continued:

Q But you are sure that when you came to this Court this morning, she accompanied you, is that correct?

A Yes, sir.

Q And you neither received a subpoena coming from the Court to testify today, is that correct?

A None, sir.

Q And where did she pick you up before you came to this Court?

A From Arte Subdivision, sir.

Q Where is that Arte Subdivision?

A In BBB, sir.

COURT:

Q Valenzuela?

A Yes, your Honor.[49]

A couple more questions were asked by the prosecutor when the judge interrupted him. Apparently, the judge wanted to clarify where Mary Ann picked up Norlito because when he recited his personal circumstances, he said that he resided in Bagong Barrio, Caloocan. The clarification led to several more questions involving when and where Norlito and Mary Ann agreed to meet in Arte Subdivision. Thereafter, she ordered the prosecutor to continue with the cross-examination.

Before the prosecutor could continue, however, the judge again asked a series of questions, all pertaining to when Norlito and Mary Ann first met. These questions, the defense claims, were aimed “to discredit”[50] the witness:

FISCAL MANANQUIL:

Q After the incident, Mr. Witness, you did not even...(interrupted).

COURT: (Butts in for clarificatory questions...)

Q What was the date on Friday?

A December 9, 1994, your Honor.

Q In other words, is it your testimony now that it was only on December 9, 1994 that you came to know that you will become a witness in this case?

A I was told by a woman by the name of Mary Ann, your Honor.

COURT:

Q Going back to the question of the Court. Is it your testimony now that it was only on Friday afternoon of December 9, 1994 that you came to know that you will be a witness in this case?

A Yes, your Honor.

COURT:

Q Tell to the Court how did Mary Ann Ty came to know your residence?

A I accompanied her in our house, your Honor.

COURT:

Q So, prior to December 9, 1994, Mary Ann Ty had already talked with your relative to this case?

A No, your Honor.

COURT:

Q When did you accompany Mary Ann Ty to your house then?

A When I was washing cars, your Honor.

COURT:

Q When was that?

A I cannot remember, sir/your Honor.

COURT:

Q How many days prior to December 9, 1994?

A I cannot remember, sir/your Honor.

COURT:

Q Could it be two (2) weeks or two (2) days prior to December 9, 1994?

A I cannot remember, your Honor.

Continue fiscal.[51]

After several questions by the prosecutor, the judge made this telling observation:

Make it on record that the Court has observed that from the very start of the testimony of the witness, he was looking in only one direction, outside. He never look to the persons propounding [sic] the questions, whether the Court, Whether to the prosecutor, or to the interpreter or even to the counsel for the accused.[52]

Another question was then posed by the prosecutor. The witness answered, but the judge promptly noted—

Likewise, make it on record that after the Court has observed, that he started to look at the persons propounding [sic] the questions.[53]

The prosecutor continued with the cross-examination, delving on the scene before and during appellants' arrest. This was followed by another series of questions from the judge which, according to appellants, "make it appear that [the witness] gave testimony for the defense because he was bribed"[54] by Mary Ann Ty.

COURT:

Q Tell to the Court how many cars did you wash and watched on that particular day when the two accused were allegedly arrested?

A Four (4) cars, your Honor.

COURT:

Q Is it your testimony now that you watched only four (4) cars from morning up to the evening?

A Yes, your Honor.

COURT:

Q What are the colors of the car of the three other cars which you washed and watched on that day, together with the car owned by the accused driven by Carlos Ty?

A White, light green and blue, your Honor.

COURT:

Q Do you also know the owners?

A No, your Honor.

FISCAL MANANQUIL:

Q You said that you cannot remember the time....

(interrupted)

COURT: (Clarificatory questions ...)

Q By the way, how much were you paid for the car which you washed and watched? A It depends upon the amount given by the customer.

COURT:

Q On that day, how much was given to you by the owners of the cars you washed, the four (4) cars.

A P20.00

COURT:

Q For four (4) cars?

A Only one, per car, your Honor.

COURT:

Q P20.00 for each car?

A Yes, your Honor.

COURT:

Q Is it your testimony now that you are paid for P20.00 for each car you washed?

A Yes, your Honor.

COURT:

Q In other words, you received P80.00 on that particular day?

A Yes, your Honor.

COURT:

Q So today you will earn anything?

A None, your Honor.

COURT:

Q Did she (referring to Mary Ann Ty) promise you to give something?

A No, your Honor.

COURT:

Q Is it your testimony now that you come to the Court without receiving a subpoena and yet you abandon your work as a car-wash boy and you will not receive any single cent?

A There was, your Honor.

COURT:

Q How much were you paid today?

A None, yet, your Honor.

COURT:

Q How much did she promise to give you?

ATTY. PUNO:

May I request your Honor to specify the person, he might not know

COURT:

Q According to him, it was Mary Ann Ty, who fetched you at Arte Subdivision. Is it your testimony now that it was Mary Ann Ty who brought you to this Court now?

A Yes, your Honor.

COURT:

Q You testified a while ago that Was she the one who promised to give you?

A Yes, your Honor.

COURT:

Q How much? How much did Mary Ann Ty promise to give you today?

A The amount I will earn for this day, your Honor.

COURT:

Q How much?

ATTY. PUNO:

“Kikitain”.. His earning this day, your Honor is what he said.

COURT:

Q Precisely, how much?

A I cannot estimate, your Honor.

FISCAL MANANQUIL:

Q More or less?

A P200.00, sir.[55]

The judge then returned to the subject of Mary Ann and Norlito’s initial meeting.

COURT: (clarificatory questions from the Court).

Q You testified that you met Mary Ann Ty in the parking lot on December 9, 1994, was it right?

A Yes, your Honor.

COURT:

Q And also, on that day, that you agreed with Mary Ann Ty that she will fetch you at the Arte Subdivision at BBB, Valenzuela, Metro Manila?

A Yes, your Honor.

COURT:

Q Tell to this Court why do you still accompany her to your house and show your house to her at Bagong Barrio, Caloocan City on December 9, 1994?

A So, that, I can relate to her the incident, your Honor.

COURT:

Q Why? Could you tell to the Court today? You cannot tell to her the place where you were working, and that you still have to accompany her to your house?

A No, sir.

COURT:

Continue Fiscal..[56]

The cross-examination by the prosecutor proceeded until the judge again propounded questions, picking up where she left off. The defense construes this line of questioning as “badgering”[57] on the part of the judge:

COURT:

Q Why did you abandon your work on December 9, 1994 and you accompanied Mary Ann Ty to your house and showed to her your house?

A I left my work, because I narrated to her the incident, your Honor.

COURT:

Q Did she give you something on that day on December 9?

A No, your Honor.

COURT:

Q Are you sure?

A Yes, your Honor.

COURT:

Q What time did you leave at the parking area?

A In the afternoon, sir/your Honor.

COURT:

Q About what time?

A 4:00 o'clock in the afternoon, your Honor.

COURT:

Q What time do you usually leave the parking area, your regular time for leaving?

A 6:00 o'clock in the evening, your Honor.

COURT:

Q So, in other words, you did not earn for two (2) hours anymore?

A Yes, your Honor.

COURT:

Q And yet, you claimed that you were not paid by Mary Ann Ty?

A Yes, your Honor.

COURT:

Anymore, Fiscal?[58]

The cross-examination ended with a question from the prosecutor. The judge also propounded a few more questions again relating to the alleged meeting between Norlito and Maryann.

Thereafter, Atty. Puno proceeded with the witness' re-direct examination. After several questions by Atty. Puno pertaining to the conversation Norlito had with Mary Ann at the witness' house, the judge interjected with her own questions on the subject. At this point, Atty. Puno tried to protest since the witness was "getting confused." The judge, according to appellants, only "exhibited greater vehemence and further tried to push him to the wall,"[59] thus:

ATTY. PUNO:

Q In fairness to the witness, he is getting confused, your Honor.

COURT:

The question is one by one. I am trying to find out the truthfulness of his testimony, counsel

COURT:

Q Is that what happened? She just glanced at you? Who started introducing one's self, yourself or herself?

A The person by the name of Mary Ann Ty, your Honor.

COURT:

Q Who described each of you? Was she or were you the one?

A She told me and I volunteered – “lakas-loob”. She told me to testify in this case, your Honor.

COURT:

Q And you agreed?

A And I readily agreed, your Honor.

COURT:

Q Where did it happen when she said you will testify and you agreed?

A In our house, sir/your Honor.

COURT:

Q In the parking lot ... Did she tell you in the parking lot?

A No, your Honor.

COURT:

Q How did you bring her to your house?

A She went with me, because I told her to go with me, your Honor.

COURT:

Q The first time that you and Mary Ann met each other at the parking lot, where you were working as a car-wash boy, what transpired between you and Mary Ann Ty in the afternoon of October 24, 1994?

A I was the person whom she asked or inquired to, your Honor.[60]

It is also claimed that the judge then “exploit[ed] the confusion of the witness” by “a maze of baffling trivials [sic]”:[61]

COURT:

Q So, at the parking lot, she already asked you to testify in this case.

A Not yet, your Honor..

COURT:

Q What REALLY transpired between you and Mary Ann at the parking lot?

A She asked me, your Honor.

COURT:

Q Is it your testimony that she immediately approached you at the parking lot?

A She asked me, your Honor.

COURT

Q In other words, she approached you at the parking lot?

A Yes, your Honor.

COURT:

Q What then were you doing at that time?

A I was washing car, your Honor.

COURT:

Q How did she introduced herself?

A She introduced herself to me, your Honor.

COURT:

Q How did she introduced herself to you?

A She told me that she is the wife of Carlos Ty.

COURT:

Q What did you talked about at the parking lot before you accompanied her to your house?

A No more, your Honor.

COURT:

Q Tell to the Court what precipitated you to accompany her to your house?

A So that she will know my house, your Honor.

COURT:

Q Why do you want her to know your house?

A So that we can talk, your Honor.

COURT:

Q Why, when you can already talk at the parking lot?

A Because I was busy then, your Honor.

COURT:

Q The more you will lose your job, if you go home?

A I was busy and I accompanied her to our place, your Honor.

COURT:

Q Why did she want to go to your house, if you know?

A So that I can narrate to her the whole incident, your Honor.

COURT:

Q Why? What did you tell her exactly before going to your house?

A About the whole incident, your Honor.

COURT:

Q In other words, you already narrated to her everything before you went to your house?

A No, your Honor.

COURT:

Q What did you tell her exactly?

A She introduced herself to me, your Honor.

COURT:

Q Did you volunteer to accompany her to your house or she volunteered to you to go to your house? What is which?

A She was the one who volunteered, your Honor.

COURT:

Q So, it was not true that she went there in order that you can tell her the whole incident, because she was the one who volunteered herself to go to your house?

A She volunteered to go with me to our house, so that we can talk, your Honor.

COURT:

Q For how long did you talk with each other at the parking lot?

A Only few seconds, your Honor.[62]

Atty. Puno manifested that the judge herself was actually conducting the cross-examination, and a spirited discussion between counsel and the judge ensued:

ATTY. PUNO:

I do not know how to tell this to the Court, Your Honor, but I will not be true to my duty to my client if I will not express this to the Court—that the Presiding Judge actually was doing the cross-examination.

COURT:

No, counsel, that's for clarification of the Court. I would like to find out also some matters.

ATTY. PUNO:

This is very honest, that is no longer clarificatory questions, but that is actually cross-examination for the prosecution... I am very sorry to say this, Your Honor. I am telling this with all honesty and I felt your Honor, I will not be true to my duty to my client if I will not express this. And I want that to be placed/put on record ...

COURT:

Those questions were asked by the Presiding Judge for clarification... for clarificatory questions, because there are matters which are very vague to the Court.

ATTY. PUNO:

That is my manifestation, your Honor.

COURT:

And that is also the observation of the Court on the matter.

ATTY. PUNO:

Do not know if this will be all that ... (interrupted).

FISCAL MANANQUIL:

Besides, it was the witness himself who testified that she was requested by Mary Ann Ty to testify, that's precisely why we are going deeper ... (interrupted)

COURT:

No. The observation is not only in the particular point. The prosecution and the defense is entitled to their own observation in the same way that the Court is entitled to its own observation. Because, the trial court has to observe the demeanor of the witness while testifying. As a matter of fact, even on appeal, the findings of the trial court with respect to findings of fact will be given much weight, because we, Judges in the trial court has the capacity to observe the demeanor of the parties to witnesses being presented in Court. Therefore, I have to make it on record the demeanor of the witness or the witnesses, so that, when I make the proper evaluation and assessment by the time a decision will be rendered in this case, everything will have to appear on record, for the guidance of the Court. It is the prerogative of the Presiding Judge to ask clarificatory questions on matters which are still very vague to Him or to Her, in order that He or She will not be misguided in the proper evaluation and assessment of the facts of the case..... That's it..

ATTY. PUNO:

Your Honor, please, I agree that clarificatory questions were to be asked by the Presiding Judge, as the latter is entitled to it. The only thing, if your Honor please, is that, this witness is not an intelligent witness and because of this cross-examination conducted by the Presiding Judge of this Court---and I am very sorry to say this---. May I place it on record that this witness actually got confused

COURT:

That is your assessment, simply because the Court was able to find out, in the conduct of its clarificatory questions, some matters which were not taken up by the Prosecuting Fiscal, like for example, the testimony of the witness that she was paid by such Mary Ann Ty, and probably that's the reason why you did not like the Court to ask that question. That's your observation and this is the observation of the Court.

ATTY. PUNO:

May I take exception to the observation of the Court with regards to payment I believe your Honor, that he was paid for the amount of his "gana"

COURT:

Everything were placed on records. Never mind, you and I cannot change the testimony of the witness at this point in time. So, let us not make any alteration in the testimony of this witness. At this point in time, the Court is not yet in a position to evaluate the evidence, as the Court is still in the process of receiving the evidence for the defense. But, the Court should not be divested of its prerogative to conduct clarificatory questions on the matter which are still very vague

ATTY. PUNO:

This is my manifestation, your Honor.

COURT:

Everything is on record.

COURT:

After all, it is the duty of the member of the Bench to always aid the Court in the proper administration of

Justice, so that the Court should not be divested of its right to conduct clarificatory questions. And, neither the lawyer should be a bar if the Court asks clarificatory questions on matters which are vague, so much so, that the Court is not interested in this case. If at all, the Court asks clarificatory questions, it is for the purpose of finding out the truth and for the purpose of aiding the Court in the proper evaluation and assessment of facts and evidence on records, in order, further, that the law may be acquired properly.[63]

On that note, the hearing of December 12, 1994 ended.

A week later, the accused filed a “Motion to Inhibit/Disqualify Presiding Judge,”[64] contending that the judge exhibited bias against the accused in her questioning. The judge denied the motion in an Order[65] dated December 20, 1994, prompting the accused to file a petition for certiorari[66] before the Court of Appeals. The Court of Appeals initially issued a temporary restraining order enjoining Judge Angeles from hearing the case.[67] The appellate court, however, eventually dismissed the petition for lack of merit and lifted the restraining order,[68] thereby allowing trial to continue.

Like the Court of Appeals, we find no prejudice in the judge’s questioning.

From the outset, Her Honor had observed that the witness Norlito Dotimas never looked at any of the persons propounding the questions—that is, until the judge made her observations of record. Understandably, appellants did not care to mention this fact in their pleadings. It is in the context of the judge’s observations, however, that her questioning must be construed.

The averted gaze, in our culture, is a telltale sign of prevarication, and Norlito’s reticent demeanor no doubt raised suspicions in the judge’s mind that his testimony may be a fabrication. The judge also noted in her Order denying the motion to disqualify her that the witness was evasive.[69] Of course, the witness’ behavior could be attributed to shyness, or even nervousness, since the witness was testifying in court for the first time.[70] In any case, it was incumbent upon the trial judge to confirm or dispel her suspicions. It was, after all, her duty to ascertain the credibility of the witness to enable her to arrive at a just verdict. In the fulfillment of this duty, the judge dwelt at length on how Norlito and Mary Ann first met and whether Norlito was paid in exchange for his testimony. It would be to curtail or limit unduly the discretion of a trial judge to impute with a sinister significance such minute and searching queries from the bench,[71] especially in light of the witness’ suspicious behavior.

In any case, a severe examination by a trial judge of some of the witness for the defense in an effort to develop the truth and to get at the real facts affords no justification for a charge that he has assisted the prosecution with an evident desire to secure a conviction, or that he had intimidated the witnesses for the defense.[72] The trial judge must be accorded a reasonable leeway in putting such questions to witnesses as may be essential to elicit relevant facts to make the record speak the truth.[73] Trial judges in this jurisdiction are judges of both the law and the facts, and they would be negligent in the performance of their duties if they permitted a miscarriage of justice as a result of a failure to propound a proper question to a witness which might develop some material bearing upon the outcome.[74] In the exercise of sound discretion, he may put such question to the witness as will enable him to formulate a sound opinion as to the ability or the willingness of the witness to tell the truth.[75] A judge may examine or cross-examine a witness.[76] He may propound clarificatory questions to test the credibility of the witness and to extract the truth.[77] He may seek to draw out relevant and material testimony though that testimony may tend to support or rebut the position taken by one or the other party.[78] It cannot be taken against him if the clarificatory questions he propounds happen to reveal certain truths which tend to destroy the theory of one party.[79]

To prop up their theory of bias, the defense claims that the judge in asking questions to prosecution witnesses

SPO3 Gilbert Santos,[80] SPO1 Gerico Bacani,[81] SPO3 Noel Castañeto,[82] and Leslie Maala[83] Actually “helped” the prosecution.[84] We do not agree. As we held in *People vs. Angcap*: [85]

x x x. At the most, there was the effort of the trial judge to arrive at the truth and do justice to the parties. It would be a distorted concept of due process if in pursuance of such a valid objective the trial judge is to be stigmatized as being guilty of an act of unfairness. x x x. “There is nothing on record to show that anyone of the judges of the trial court attempted to help the prosecution. The questions propounded by the judge, subject of appellant’s complaint, appeared to have been intended to elicit the truth from the witnesses. The inquisitiveness complained of by appellant’s counsel did not have the purpose of unduly harming the substantial rights of the accused. It was only to be expected from the judges who, with full consciousness of their responsibilities, could not easily be satisfied with incompleteness and obscurities in the testimonies.” This assignment of error is therefore unfounded.[86]

Next, it is claimed that the judge “prevented the defense from pursuing intensive inquiries of witnesses.”[87] Instances are cited where the judge allegedly “blocked off”[88] questions by defense counsel even when the prosecutor failed to object. Thus, when SPO3 Santos was testifying for the defense as a hostile witness, Atty. Ifurung, the counsel for the defense, asked him:

Q I ask you Mr. Santos, are you a forensic chemist?

A No, sir.

Q. Have you ever been trained in the detection and identification of drugs?

A Yes, sir.

Q. You would be able to determine a drug without use of a laboratory examination?

A Yes, because that is similar with the one brought to the laboratory, sir.

Q Would you be able to differentiate from other crystalline like “tawas” without conducting laboratory examination?

A The appearance of tawas is (interrupted)

COURT:

The witness is not testifying as an expert witness...

ATTY. IFURUNG:

But he effected the arrest, your Honor.

COURT:

But you are practically asking him of the opinion on shabu...

FISCAL CAJIGAL:

The witness is incompetent. He is not a chemist who can determine whether the substance was shabu or not...

ATTY. IFURUNG:

The determination of whether the substance is shabu or not is important for the purpose of effecting the arrest....

COURT:

While it may be true that the determination of the substance is shabu or not by the witness is The witness is not testifying here as an expert witness and you are asking for an opinion, counsel.

ATTY. IFURUNG:

May we move for consideration because he said he effected the arrest and the reason is he said he was selling the shabu. And now, I am testing his credibility.

COURT:

Motion for reconsideration, DENIED.

x x x

Q. Where did you undergo any training in the determination of regulated and prohibited drugs, or did you not?

A Camp Crame, Quezon City, sir.

Q Will you tell us who was your instructor on that particular training?

A Inspector Reyes, sir.

Q Will you tell this Honorable Court the full name of Inspector Reyes?

A Romeo Reyes, sir.

Q Will you tell us the degree of this Inspector Reyes?

A Class '83, sir.

Q I am asking for his academic degree.

FISCAL CAJIGAL:

Incompetent and immaterial...

COURT:

Sustained.

ATTY. IFURUNG:

He claims that he is an expert by reason of his training. I am asking him who was his instructor. It is very material, because the witness testified that he was very sure that what he bought is methamphetamine hydrochloride and I am testing his credibility.

COURT:

While it may be true that this witness testified that he bought shabu, he is not testifying here as forensic chemist with expertise on chemical analysis. He is testifying as a poseur buyer and therefore, further questions on the witness would be out of order. Hence, the Court grants the motion of the prosecuting fiscal.

ATTY. IFURUNG:

Q I asked you, Mr. Witness, as an agent, how long have been an agent of NARCOM?

A Six (6) years, sir.

Q Have you written any book on the identification and analysis on drugs?

FISCAL CAJIGAL:

Objection, your Honor.

COURT:

Sustained.

ATTY. IFURUNG:

May we ask for reconsideration...

COURT:

Denied.

ATTY. IFURUNG:

He has opened the gate on this line of questionings. We wanted to test his credibility.

COURT:

Third motion for reconsideration, denied.

ATTY. IFURUNG:

In fairness to the accused. The accused here is charged with capital offense.

COURT:

The Court is aware of that.

ATTY. IFURUNG:

We are only asking that we will be allowed to test the credibility of the witness on material points, but not on expertism and special knowledge.

COURT:

On this particular case, you are asking the witness on particular knowledge or qualification.[89]

The questions by counsel in court regarding the ability of the arresting officer to distinguish between shabu and tawas without a laboratory examination, the academic degree of his training instructor, and the officer's authorship of books on drug identity and analysis are irrelevant, improper and impertinent. In drug cases, an arrest made in flagrante delicto does not require that the arresting officer possess expert knowledge of the substance seized, or that he perform precise scientific tests to determine its exact nature. That would be impractical, and obstructive to effective law enforcement. The judge was therefore correct in disallowing these questions.

The judge need not have waited for an objection from opposing counsel to bar immaterial questions. A judge has the duty to see to the expeditious administration of justice.[90] If the opposing counsel does not object to such questions, the judge cannot stand idly by and allow the examining counsel to propound endlessly questions that are clearly irrelevant, immaterial, improper or tend to be repetitious. The action by the judge in this case, therefore, cannot be deemed prejudicial; indeed, it is entirely proper. In *Ventura et al. vs. Judge Yatco*, [91] we said:

About the active part that the judge took in the trial, the court finds that said active part was for the purpose of expediting the trial and directing the course thereof in accordance with the issues. While judges should as much as possibly refrain from showing partiality to one party, it does not mean that a trial judge should keep mum throughout the trial and allow parties that they desire, on issues which they think are the important issues, when the former are improper and the latter, immaterial. If trials are to be expedited, judges must take a leading part therein, by directing counsel to submit the evidence on the facts in dispute, by asking clarifying questions and by showing an interest in a fast and fair trial. Judges are not mere referees like those of a boxing bout, only to watch and decide the results of the game; they have as much interest as counsel in the orderly and expeditious

presentation of evidence, calling attention of counsel to points at issues that are overlooked, directing them to ask questions that would elicit the facts on the issues involved, clarifying ambiguous remarks by witnesses, etc. Unless they take an active part in trials in the above form and manner, and allow counsel to ask questions, whether pertinent or impertinent, material or immaterial, the speedy administration of justice which is the aim of the Government and of the people cannot be attained. Counsel should, therefore, not resent any interest that the judge takes in the conduct of the trial, they should be glad that a trial judge takes such interest and help in the determination of the truth.

It is also argued that the judge showed her “uneven hand”[92] when she overruled objections interposed by the defense when it was the prosecution’s turn to examine SPO3 Santos. This was supposedly in contrast to the above actuation exhibited by the judge when the defense was examining the same witness.

CROSS-EXAMINATION

FISCAL CAJIGAL:

Q Mr. witness, you have a Commanding Officer in your unit?

A Yes, sir.

Q And you will agree with me that your commanding officer is the one who determines whether the operation is a buy-bust or a raid?

A Yes, sir.

ATTY. IFURUNG:

This was not taken on direct-examination. He said he was the one who arranged with Stardust, so we object with the line of questionings.

FISCAL CAJIGAL:

I am on cross-examination.

COURT:

Overruled, witness may answer.

A Our commanding Officer, sir.

Q In this particular case, you are telling this Honorable Court that it was your Commanding Officer who will determine whether the buy bust operation shall be conducted against accused Zheng Bai Hui, is it not?

A Yes, sir.

Q Likewise, Mr. witness, it was your Commanding Officer who determines whether or not the two P500.00 paper bills which were used together with the boodle money should be placed with fluorescent powder or not?

ATTY. IFURUNG:

I will object, I think the Commanding Officer would be the best witness on this line of questionings.

COURT:

I would like to be clarified on this. You testified during the direct-examination that you lied to the accused when you said that you are a drug pusher, who has run out of stock?

A Yes, your Honor.

Q Why do you say so? Why did you lie to the accused and said that you are a drug pusher?

ATTY. IFURUNG:

With due respect to this Honorable Court, we will object. Because in that case, the Honorable Court would be now assuming. . . (interrupted)

COURT:

The Court, in the exercise of its duty and in order to find out the truth, can ask clarificatory questions.

WITNESS:

In order that I could buy from him drugs, your Honor.

FISCAL CAJIGAL:

x x x.

Q And lastly, why did you effect the arrest of Mr. Tan Ty?

A Because of the shabu which he was bringing, sir.

Q When was that?

A On October 24, 1994 between 6:00 o'clock to 7:00 o'clock in the evening, sir.

Q Was that after the fact that after you have handled the boodle money to the accused?

ATTY. IFURUNG:

THE FACT in the last question, he stated negative to the answer and I closed my examination. . . . It was answered contrary to the answer of the accused. . . .

COURT:

Objection, overruled, witness may answer.

A Not yet. When he was able to bring it to me and who hand it to me and I opened it, that's the time I gave the boodle money, your Honor/sir.

x x x

RE-CROSS EXAMINATION

FISCAL CAJIGAL:

Q Please tell to the Court what were the specific instructions given by your Commanding Officer before you effected the buy-bust operation?

ATTY. IFURUNG:

We object in the first place, there was no statement by the eye witness as to any instruction given by his Commanding Officer with respect to that buy-bust operation.

COURT:

Overruled, witness may answer.

A We conducted surveillance on the area where we are going to. And if we were already there, I will approach him and I will pose as a buyer. And if I can see that there is shabu, then I will arrest him, sir.[93]

We discern no bias in the foregoing proceedings. The questions of the prosecutor were proper, and the objections

of defense counsel were correctly overruled.

The prosecutor's question as to whether the Commanding Officer determines if the operation should be a buy-bust or a raid was objected to for not having been taken up on direct examination. The question, however, was merely preliminary and was posed to lay the foundation for the next question, that is, whether it was the Commanding Officer who determined if fluorescent powder should be placed on the boodle money or not. The latter question, too, was within the bounds of the rules of evidence^[94] for defense counsel had previously asked questions whether fluorescent powder was used in the operation.^[95] The question was intended to blunt any implication from defense counsel's questions that SPO3 Santos was somehow responsible for the non-use of fluorescent powder in the buy-bust operation. In response, SPO3 Santos said that the decision to use fluorescent powder rested in the Commanding Officer. Contrary to defense counsel's objection, SPO3 Santos was equally competent to answer this question. He was a subordinate of the Commanding Officer and a member of that particular command, and therefore knowledgeable of the decision-making policies therein.

The judge's query as to why SPO3 Santos pretended to be a drug pusher was completely relevant in determining the legality of the entrapment. Moreover, the defense counsel had asked during the direct examination if SPO3 Santos lied when he allegedly told the accused that he was a drug pusher. The judge merely asked why he lied. The question was clearly clarificatory.

Neither do we find anything objectionable to the prosecutor's question on whether the accused were arrested after SPO3 Santos handed over the money to them. It is not clear from the transcript what exactly was the ground for counsel's objection.

Lastly, the judge did not err in overruling counsel's objection to the questions pertaining to the Commanding Officer's specific instructions to SPO3 Santos for, on re-direct examination, Atty. Ifurung, counsel for the defense, asked:

Q What is the name of your Commanding Officer?

A Sr. Ins. Franklin Mabanag, sir.

ATTY. IFURUNG:

Q So, you just follow instructions from your Commanding Officer?

A Yes, sir.

Q And you were instructed by your Commanding Officer to effect the arrest of Carlos Tan Ty?

A Yes, sir.

Q And you were instructed to effect his arrest under any circumstances?

A Yes, sir.

FISCAL CAJIGAL:

Misleading, your Honor.

ATTY. IFURUNG:

That will be all, your Honor.^[96]

Upon the conclusion of the re-direct examination, the adverse party may re-cross-examine the witness on matters stated in his re-direct examination.^[97]

In sum, we find that the judge, in propounding questions to the witnesses, in overruling ungrounded objections and disallowing improper questions by the defense, did not exhibit any bias against the accused. On the contrary,

the judge demonstrated nothing more than an unwavering quest for the truth and a rightful intolerance for impertinence, fully cognizant of her duties and of the scope of her discretion.

III

Appellants contend that the trial court erred in sustaining the refusal by Sr. Insp. Mabanag to divulge the identity of Stardust, the woman who informed the police about the two accused. It is claimed that such refusal violated the right of the accused to confront and cross-examine said witness.[98]

As a rule, informers are not presented in court because of the need to preserve their cover so they can continue their invaluable service to the police.[99] Equally strong reasons include the maintenance of the informant's health and safety and the encouragement of others to report wrongdoing to police authorities.[100] The rule against disclosure is not absolute, however. In *Roviaro v. United States*,[101] the United States Supreme Court declared:

What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of that law. [Citations omitted.] The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law-enforcement officials and, by preserving their anonymity, encourages them to perform that obligation.

The scope of the privilege is limited by its underlying purpose. Thus, where the disclosure of the contents of a communication will not tend to reveal the identity of an informer, the contents are not privileged. Likewise, once the identity of the informer has been disclosed to those who would have cause to resent the communication, the privilege is no longer applicable.

A further limitation on the applicability of the privilege arises from the fundamental requirements of fairness. Where the disclosure of an informer's identity, or of the contents of his communication, is relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause, the privilege must give way. In these situations the trial court may require disclosure and, if the Government withholds the information, dismiss the action.

x x x

We believe that no fixed rule with respect to disclosure is justifiable. The problem is one that calls for balancing the public interest in protecting the flow of information against the individual's right to prepare his defense. Whether a proper balance renders nondisclosure erroneous must depend on the particular circumstances of each case, taking into consideration the crime charged, the possible defenses, the possible significance of the informer's testimony, and other relevant factors.

Before disclosure of the informer's identity may be allowed, however, the defense must, before or during the trial, request the production of the confidential informant or his identification.[102] (Thus, in *Roviaro* the accused repeatedly demanded disclosure.) In addition, the defendants must show how the identity of the informer is essential to their defense.[103]

In this case, counsel for appellant Carlos Tan Ty indeed requested the trial court to compel Sr. Insp. Mabanag, who was then testifying on direct examination, to reveal the identity of Stardust:

Q: What is the real name of Stardust?

A: For security reason, we cannot give her name, sir.

Q: Is it not a fact Mr. Mabanag, that this informant was the one who arrange for the selling of shabu?

A: Yes, sir.

Q: In other words this Stardust is known to the accused?

A: Yes, sir.

Q: So there is no reason for you to hide the identity of the informant considering that according to you she is known to the accused?

A: Yes, sir.

Q: In fact she was the one who allegedly arrange for the buying of the alleged shabu?

A: Yes, sir.

Q: Will you please give her name?

A: For security reason I cannot give her name, because we are putting the very life of the informant to danger, sir

Atty. Ifurung:

Your Honor please may we request the witness to give the name of the alleged informant since according to him she is known to the accused, so there is no reason for the witness to keep the identity of the informant, so may we request that the Court directs the witness to divulge the identity of the informant

Court:

She might be known but the court will not compel the witness to divulge the identity of the informant for security reason as alleged by the witness.[104]

Appellants nevertheless failed to show at the time of their request how the identity of the informer or her production was essential to their defense. In *State v. Driscoll*,^[105] the defense, during the cross-examination of the State's final witness, asked the witness the name of the informant. The prosecution objected to the question for being outside the scope of the direct examination. The court sustained the objection, stating "I will not compel him to answer that question if he desires not to at this time." The state rested and the defendant presented his evidence without renewing his request for the disclosure of the identity of the informer. The defendant was subsequently convicted for burglary. On appeal, the defendant assigned as error the trial court's refusal to require disclosure of the identity of the informer. The Supreme Court of Washington held that the trial court did not commit error in ruling thus. It held:

In the instant case, the request came from the defendant at the time and in the manner hereinabove set out, and was not in any fashion thereafter renewed. The defendant, at the time of the request, did not advise the trial court of his proposed defense of entrapment nor undertake, in any way, to enlighten the trial court as to the materiality of relevancy of the requested disclosure. The ruling at that particular stage of the proceedings was to the effect that disclosure would not be required at that time. The door was thus open to subsequent showing and request.

The Supreme Court of North Carolina in *State v. Boles*, 246 N.C. 83, 85, 97 S.E. 2nd 476, 477, in considering a like claim of error under analogous circumstances, stated

"In passing on defendant's assignments based on exceptions Nos. 4 and 5, we must do so in the light of the facts before Judge Johnston at the time he made the ruling complained of. At that time there was no conflict in the testimony. Nothing appeared in the evidence concerning the informer except the fact that he was present when the witness made the purchase. We hold that the defendant did not make a sufficient showing to require the disclosure. The court's refusal to order it under the circumstances was not error.

* * * * *

“Had the defendant, in the light of this conflict [a conflict in the evidence developed by defendant’s testimony], requested the name of the confidential informer as a possible defense witness, a more serious question would have been presented. That question, however, was not before Judge Johnston and consequently is not before us. The propriety of disclosing the identity of an informer must depend on the circumstances of the case and at what stage of the proceedings the request is made. *Roviaro v. United States*, [decided 25 March, 1957, 353 U.S. 53, 1 L.Ed.2d 639] 77 S.Ct. 623.”

Under the circumstances of the instant case, we hold the trial court did not commit error in the ruling complained of.

Like in *Driscoll*, the defense in this case did not renew their request for the production of the informer’s identity. Nor did they advise the trial court of their defense or the relevancy of such disclosure when they demanded the production of *Stardust*’s identity. When Sr. Insp. *Mabanag* was put on the stand, there was no hint that the accused was going to raise frame-up, extortion, and instigation as defenses. The accused had not yet testified; neither had appellant *Carlos Tan Ty*’s wife, *Mary Ann*. The defense did not raise the question of the informer’s identity again after these witnesses testified.

The burden of showing need for disclosure is upon defendants.[106] The necessity for disclosure depends upon “the particular circumstances of each case, taking into consideration the crime charged, the possible defenses, the possible significance of the informer’s testimony, and other relevant factors.” Appellants did not develop any such criteria with reference to the merits of the case.[107] A mere request during a witness’ examination indicates speculation on the relevancy of his testimony; and mere speculation an informer may be helpful is not enough to carry the burden and overcome the public interest in the protection of the informer.[108] Hence, the trial court did not err in sustaining the refusal of the witness to reveal the identity of *Stardust*.

IV

We come now to the sufficiency of the prosecution evidence.

The elements necessary in every prosecution for the illegal sale of shabu are: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor.[109] The Court finds that the testimonies of the prosecution witnesses adequately establish these elements. The Court has no reason to doubt the following assessment of the trial court regarding the credibility of these witnesses:

An exhaustive scrutiny of the prosecution’s evidence shows that the accused were caught in flagrante delicto through a buy-bust operation staged by police operatives. Both accused were positively identified by the poseur-buyer himself and by three (3) other members of the buy-bust team. These eye witnesses for the prosecution were also consistent in their testimonies concerning the important details of the sale, to wit: (1) that the informant was at the scene and it was she who identified the two accused, (2) that *Gilbert Santos* acted as poseur-buyer, (3) that the said poseur-buyer handed the boodle money to accused *Carlos Tan Ty* and the latter called his co-accused *Nelson Hong Ty* who handed to the poseur-buyer a blue plastic bag containing the regulated drug, *Methamphetamine Hydrochloride* or shabu.[110]

Appellate courts accord the highest respect to the assessment of witnesses’ credibility by the trial court, because the latter was in a position to observe their demeanor and deportment on the witness stand.[111]

Appellants however attempt to poke holes in the prosecution’s case. They theorize that the buy-bust operation was merely a contrivance as indicated by the following so-called “unmistakable hallmarks”:

- (a) a fictitious informant,

- (b) no pre-arrest test-buy,
- (c) absence of pre-arrest surveillance,
- (d) use of bogus/boodle money,
- (e) drug sale in public,
- (f) no record of operation in the police blotter,
- (g) money not dusted with fluorescent powder.[112]

We are not swayed by this argument.

Appellants claim that the failure of the prosecution to present the informer in court demonstrates that the informer is fictitious and gives rise to the presumption that her testimony would be adverse if produced.

The rule in determining whether the informer should be presented for a successful prosecution in cases involving buy-bust operations is best stated in *People vs. Doria*:^[113]

Except when the appellant vehemently denies selling prohibited drugs and there are material consistencies in the testimonies of the arresting officers, or there are reasons to believe that the arresting officers had motives to testify falsely against the appellant, or that only the informant as the poseur-buyer who actually witnessed the entire transaction, the testimony of the informant may be dispensed with as it will be merely corroborative of the apprehending officers' eyewitness testimonies. There is no need to present the informant in court where the sale was actually witnessed and adequately proved by prosecution witnesses.

None of the above circumstances obtains in this case. While appellants do deny selling shabu, there are no material inconsistencies in the testimonies of the arresting officers. The arresting officers had no motive to testify against appellants; the claims of extortion against the arresting officers, as will be shown later, were not firmly established. Finally, the informer was not even the poseur-buyer in the operation. The sale was actually witnessed and adequately proved by the prosecution witnesses. The presumption laid down in Section 3(e), Rule 131 of the Rules of Court, to wit: "(e) [t]hat evidence willfully suppressed would be adverse if produced," therefore, does not apply since the testimony of the informer would be merely corroborative.^[114]

That no test buy was conducted before the arrest is of no moment for there is no rigid or textbook method of conducting buy-bust operations. For the same reason, the absence of evidence of a prior surveillance does not affect the regularity of a buy-bust operation,^[115] especially when, like in this case, the buy-bust team members were accompanied to the scene by their informant.^[116] The Court will not pretend to establish on a priori basis what detailed acts police authorities might credibly undertake and carry out in their entrapment operations.^[117] The selection of appropriate and effective means of entrapping drug traffickers is best left to the discretion of police authorities.^[118]

Appellants describe as implausible the testimony that they supposedly merely "looked" at the boodle money without counting it. We find nothing dubious in appellants' behavior. Indeed, it is totally consistent with human nature. Appellants were engaged in an illegal activity and it was necessary that they act inconspicuously. The sale was consummated in public and appellants would invite unwanted attention if they counted the money right in busy Monumento.

Appellants also fault the police officers for not observing the purported "proper procedure" in the marking and the blotter of the P500 bills used as part of the boodle money. They failed to establish, however, that such a procedure existed. Sr. Insp. Mabanag, on the other hand, testified that they do not even maintain a police

blotter[119]since they were a special operation unit.[120]

That the sale was in public does not diminish the prosecution witnesses' credibility or the trustworthiness of their testimony. In *People vs. Zervoulakos*,^[121] we observed that "the sale of prohibited drugs to complete strangers, openly and in public places, has become a common occurrence. Indeed, it is sad to note the effrontery and growing casualness of drug pushers in the pursuit of their illicit trade, as if it were a perfectly legitimate operation."

Appellants submit, however, that this ruling applies only to "small level drug trafficking," and not to cases involving a substantial amount of drugs, such as the one at bar. The distinction is illusory for it is not improbable for large transactions involving drugs to take place under the cover of commonplaceness. A kilo of shabu can be transported and delivered with facility in public and it does not tax credulity that such transactions indeed occur. While the sale may have been made to a stranger, the lure for easy profits can easily outweigh the risk of arrest and prosecution. Moreover, the risk was reduced by the introduction by the informant, who had regular contact with appellant Carlos Tan Ty,^[122] of the poseur-buyer to the latter.

Equally without merit is the argument that the buy-bust was not recorded in the police blotter is proof of a sham buy-bust. A prior blotter report is neither indispensable nor required in buy-bust operations.^[123]

Lastly, the failure of the NARCOM agents to use fluorescent powder on the boodle money is no indication that the buy-bust operation did not take place. Like a prior blotter report, the use of fluorescent powder is not indispensable in such operations. The use of initials to mark the money used in the buy-bust operation has been accepted by this Court.^[124] The prosecution has the prerogative to choose the manner of marking the money to be used in the buy-bust operation.^[125]

Appellants raise the defense of frame-up. Frame-up is the usual defense of those accused in drug related cases,^[126] and it is viewed by the Court with disfavor^[127] since it is an allegation that can be made with ease.^[128] For this claim to prosper, the defense must adduce clear and convincing evidence to overcome the presumption that government officials have performed their duties in a regular and proper manner.^[129] Appellants have failed to provide clear and convincing evidence that they were framed by the NARCOM agents. Appellants' testimonies were corroborated merely by Norlito Dotimas and Mary Ann Ty. Norlito Dotimas' credibility, however, remains doubtful because of his suspicious behavior and evasive answers while on the witness stand. Mary Ann Ty, on the other hand, is the common-law wife of appellant Carlos Tan Ty and the mother of his three children.^[130] She has a natural interest in favoring appellants. Pitted against the presumption that government officials have performed their duties in a regular and proper manner, the evidence for the defense simply cannot prevail.

The claim of extortion is similarly untenable. Like an alleged frame-up, a supposed extortion by police officers is a standard defense in drug cases^[131]and must also be proven by clear and convincing evidence.^[132] Again, appellants have failed to discharge this burden. Such a claim is supported only by the same unreliable evidence to support the claim of frame-up.

Appellants submit in the alternative that the facts as presented by the prosecution reveal that the law enforcers instigated appellants to sell shabu to them. We find no instigation in this case.

x x x the general rule is that it is no defense to the perpetrator of a crime that facilities for its commission were purposely placed in his way, or that the criminal act was done at the 'decoy solicitation' of persons seeking to expose the criminal, or that detectives feigning complicity in the act were present and apparently assisting in its commission. Especially is this true in that class of cases where the offense is one of a kind habitually committed,

and the solicitation merely furnishes evidence of a course of conduct. Mere deception by the detective will not shield defendant, if the offense was committed by him free from the influence or the instigation of the detective.[133]

Here, the law enforcers received a report from their informant that appellants were “big time” drug pushers. Poseur-buyer SPO3 Santos then pretended to be engaged in the drug trade himself and, with the help of his fellow NARCOM agents, arrested appellants in the act of delivering the shabu. Hence, appellants were merely caught in the act of plying their illegal trade.[134]

Contrary to appellants’ contentions, no tinge of unconstitutionality attended the arrest of appellants. What we said in *People vs. Liquen*[135] is sufficient to dispose of this argument:

In the case at bar, the buy-bust operation was formed by the police officers precisely to test the veracity of the tip and in order to apprehend the perpetrator. Having caught the culprit red-handed as a result of the buy-bust operation, Garcia and his team-mates were not only authorized but were also under obligation to apprehend the drug pusher even without a warrant of arrest. Section 5 (a) of Rule 113 of the Revised Rule on Criminal Procedure, reads in part as follows: “Sec.5. Arrest without warrant; when lawful—A peace officer or a private person may, without a warrant, arrest a person: (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense; x x x.”

Clearly, the situation in the case at bar is one where a person commits a crime in the presence of a police officer; hence, the latter may validly arrest the offender even without first obtaining a warrant of arrest.[136]

There can be no doubt, therefore, that appellants are guilty of the sale of methamphetamine hydrochloride, a regulated drug,[137] in violation of Section 15 of the Dangerous Drugs Act,[138] as amended.

Conspiracy between the appellants was evident. The transaction was successfully consummated between the poseur-buyer and appellant Carlos Tan Ty, together with his companion, appellant Nelson Hong Ty, with one receiving the marked money and the other delivering the contraband to the poseur buyer. No other logical conclusion would follow from the duo’s concerted action except that they had a common purpose and community of interest, the accepted indicia that could establish the existence of conspiracy.[139] Conspiracy having been established, the accused are answerable as co-principals regardless of the degree of their participation.[140]

“Conspiracy,”[141] as used herein, refers to the manner of incurring criminal liability, and not a crime in itself. Conspiracy is not punishable except when the law specifically provides a penalty therefor,[142] such as in conspiracies to commit treason,[143] coup d’etat,[144] rebellion,[145] sedition,[146] and the sale of dangerous drugs. The last is punishable under Section 21(b) of the Dangerous Drugs Act.[147]

When the conspiracy relates to a crime actually committed, the conspiracy is absorbed; it does not constitute a separate crime, but is only a manner of incurring criminal liability. The participants to the crime are merely held equally liable since the act of one is the act of all. It was thus error for the trial court to convict appellants for “Section 15, Article III, RA 6425 [punishing the sale of regulated drugs] in relation to Section 21-B [penalizing the conspiracy to sell regulated drugs] of the same Act.”[148] In this case, the crime (the sale of regulated drugs), and not only the conspiracy (to sell the same) was actually committed. To hold appellants liable for violation of Section 15 alone, therefore, would be more precise and more in accord with the principles of criminal law.[149]

V

We arrive at the imposition of the proper penalty.

Section 15 of the Dangerous Drugs Act, as amended by Republic Act No. 7659 states:

SEC. 15. Sale, Administration, Dispensation, Delivery, Transportation and Distribution of Regulated Drugs.- The penalty of reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall sell, dispense, deliver, transport or distribute any regulated drug.

Notwithstanding the provisions of Section 20 of this Act to the contrary, if the victim of the offense is a minor, or should a regulated drug involved in any offense under this Section be the proximate cause of the death of a victim thereof, the maximum penalty herein provided shall be imposed.

In relation thereto, Section 20 of the same law, as amended, provides:

SEC. 20. Application of Penalties, Confiscation and Forfeiture of the Proceeds or instruments of the Crime.- The penalties for offenses under Sections 3, 4, 7, 8 and 9 of Article II and Sections 14, 14-A, 15 and 16 of Article III of this Act shall be applied if the dangerous drugs involved is in any of the following quantities:

- 40 grams or more of opium;
- 40 grams or more of morphine;
- 200 grams or more of shabu or methylamphetamine hydrochloride;
- 40 grams of more of heroin;
- 750 grams or more of indian hemp or marijuana;
- 50 grams or more of marijuana resin or marijuana resin oil;
- 40 grams of more of cocaine or cocaine hydrochloride; or
- In the case of other dangerous drugs, the quantity of which is far beyond therapeutic requirements, as determined and promulgated by the Dangerous Drugs Board, after public consultations/hearings conducted for the purpose.

Otherwise, if the quantity involved is less than the foregoing quantities, the penalty shall range from prison correccional to reclusion perpetua depending upon the quantity.

From the foregoing provisions, the penalty for the sale of regulated drugs is based, as a rule, on the quantity thereof. The exception is where the victim is a minor or where the regulated drug involved is the proximate cause of the death of the victim. In such cases, the maximum penalty prescribed in Section 15, i.e., death, shall be imposed, regardless of the quantity of the prohibited drugs involved.[150] Appellants, therefore, cannot be sentenced to suffer the death penalty under this exception, the conditions for its imposition not being present. Their penalty ought to be determined by the quantity of methamphetamine hydrochloride involved in the sale.

To recall, appellants sold the NARCOM operatives a substance weighing 992.3 grams. This amount is more than the minimum of 200 grams required by the law to warrant the imposition of either reclusion perpetua or, if there be aggravating circumstances, the death penalty.[151] Appellants however foist the probability that the substance sold could contain additives or adulterants, and not just methamphetamine hydrochloride. Thus, the actual weight of pure shabu could be less than 992.3 grams, thereby possibly reducing the imposable penalty.

The contention has no merit. We rejected a similar argument in *People vs. Tang Wai Lan*: [152]

Accused-appellant then argues that the tests were not done for the entire amount of drugs allegedly found inside the bags. It is suggested that since the law, Republic Act No. 7659, imposes a penalty dependent on the amount or quantity of drugs seized or take, then laboratory tests should be undertaken for the entire amount or quantity of drugs seized in order to determine the proper penalty to be imposed.

The argument is quaint and even borders on being ridiculous. In the present case, even assuming that the confirmatory tests were conducted on samples taken from only one (1) of the plastic packages, accused-appellant's arguments must still fail.

It will be recalled that each of the plastic packages weighed 1.1 kilograms, an amount more than sufficient to justify imposing the penalty under Sec. 14 of Rep. Act. No. 6425 as amended by Rep. Act No. 7659. A sample taken from one (1) of the packages is logically presumed to be representative of the entire contents of the package unless proven otherwise by accused-appellant. Therefore, a positive result for the presence of drugs is indicative that there is 1.1 kilogram of drugs in the plastic package from which the sample was taken. If it is then proved, beyond reasonable doubt, x x x that accused appellant transported into the Philippines the plastic packages from which samples were taken for tests, and found positive as prohibited drugs, then conviction for importing "shabu" is definitely in order. (Italics in the original. Underscoring supplied.)

Thus, if the prosecution proves that the sample is positive for methamphetamine hydrochloride, it can be presumed that the entire substance seized is shabu. The burden of evidence shifts to the accused who must prove otherwise. Appellants in this case have not presented any evidence to overcome the presumption.

The sale of 200 or more grams of methamphetamine hydrochloride, a regulated drug,[153] is punishable by reclusion perpetua to death, and a fine ranging from P500,000 to P10,000,000.00.[154] No aggravating circumstances attended the commission of the crime. Hence, appellants can only be sentenced to reclusion perpetua.

The personal corporal punishment must be complemented by the pecuniary penalty provided therein. With respect to the latter, the courts may determine the amount of the fine within the range provided by law, subject to the rule on increasing or reducing the same by degrees as provided by the Revised Penal Code.[155]

WHEREFORE, the decision of the Regional Trial Court of Caloocan City is hereby **AFFIRMED WITH MODIFICATIONS**. Appellants Zheng Bai Hui alias Carlos Tan Ty and Sao Yu alias Nelson Hong Ty are found **GUILTY** beyond reasonable doubt of violating Section 15 of Republic Act No. 6425 and are hereby sentenced to each pay a fine of **FIVE HUNDRED THOUSAND PESOS (P500,000.00)** and to suffer the penalty of **RECLUSION PERPETUA**.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

[1] Records, p. 1.

[2] TSN, November 9, 1994, pp. 2-22; TSN, November 14, 1994, pp. 1-20; TSN, November 23, 1994, pp. 22-30.

[3] TSN, November 17, 1994, pp. 10-40; TSN, November 23, 1994, pp. 31-47.

[4] TSN, November 25, 1994, pp. 2-27; TSN, November 28, 1994, pp. 2-14.

[5] TSN, December 2, 1994, pp. 2-47.

[6] Exhibits "C" to "C-6."

[7] Exhibit "A."

[8] Exhibit "B."

- [9] Exhibits “A-1” and “B-1.”
- [10] Exhibit “D.”
- [11] Exhibits “D-1” to “D-3.”
- [12] Exhibit “J-4.”
- [13] Exhibit “J.”
- [14] Exhibits “J-1-A” to “J-1-C,” “J-3-A” and “J-3-B,” and “J-4-A” to “J-4-C.”
- [15] TSN, November 23, 1994, pp. 2-30.
- [16] Exhibit “G.”
- [17] Exhibit “H.”
- [18] Exhibit “I.”
- [19] TSN, September 4, 1996, pp. 2-16.
- [20] TSN, September 25, 1996, pp. 2-24.
- [21] Both accused speak Mandarin, and have difficulty speaking Filipino and English.
- [22] TSN, May 3, 1996, pp. 8-42.
- [23] December 12, 1994, TSN, pp. 5-30.
- [24] TSN, January 8, 1996, pp. 2-22; TSN, February 9, 1996, pp. 1-18.
- [25] TSN, November 27, 1995, pp. 5-22.
- [26] TSN, December 11, 1995, pp. 2-11.
- [27] TSN, May 5, 1996, pp. 2-16; TSN, June 11, 1996, pp. 2-20.
- [28] Rollo, p. 491.
- [29] *Id.*, at 80-81
- [30] *Id.*, at 281-282. Underscoring in the original.
- [31] *Id.*, at 358-359.
- [32] TSN, November 14, 1994, p. 20.
- [33] Records, p. 55.
- [34] TSN, November 17, 1994, p. 2.
- [35] *Ibid.*
- [36] *Ibid.*
- [37] *Id.*, at 3.
- [38] *Id.*, at 3-8.
- [39] *Id.*, at 8.

[40] *Id.*, at 9.

[41] *Ibid.*

[42] See *Title Guaranty & Trust Co. v. Wilby*, 69 N.E. 2d 429 (1946).

[43] *Rollo*, p. 359.

[44] 76 S.W. 111 (1902).

[45] 6 Greenl. 72, 19 Am. Dec. 191.

[46] 305 P.2d 723 (1956).

[47] 225 P.2d 400 (1950).

[48] *Rollo*, pp. 82 and 283.

[49] TSN, December 12, 1994, pp. 11-12.

[50] *Rollo*, p. 83.

[51] TSN, December 12, 1994, pp. 13-14.

[52] *Id.*, at 15.

[53] *Ibid.*

[54] *Rollo*, p. 84.

[55] TSN, December 12, 1994, pp. 19-21.

[56] *Id.*, at 21-22.

[57] *Rollo*, p. 86.

[58] TSN, December 12, 1994, pp. 24-25.

[59] *Rollo*, p. 88.

[60] *Id.*, at 28-29.

[61] *Rollo*, p. 89.

[62] TSN, December 12, 1994, pp. 28-29.

[63] *Id.*, at 31-33.

[64] *Records*, pp. 80-95.

[65] *Id.*, at 99-100.

[66] *Id.*, at 105-133.

[67] Resolution dated January 26, 1995; *Records*, p. 175.

[68] Decision dated June 22, 1995; *Records*, pp. 203-208.

[69] *Records*, p. 99.

- [70] TSN, December 12, 1994, p. 26.
- [71] *People vs. Ancheta*, 64 SCRA 90 (1975).
- [72] *United States vs. Lim Tiu*, 31 Phil. 504 (1915).
- [73] *People vs. Manalo*, 148 SCRA 98 (1987).
- [74] *United States vs. Hudieres and Sagun*, 27 Phil. 44 (1914).
- [75] *Id.*
- [76] *People vs. Manalo*, 148 SCRA 98 (1987).
- [77] *People vs. Mui*, 117 SCRA 696 (1982).
- [78] *People vs. Manalo*, *supra*.
- [79] *People vs. Ibasan, Sr.*, 129 SCRA 695 (1984).
- [80] TSN, November 14, 1994.
- [81] TSN, November 23, 1994, pp. 43-44.
- [82] TSN, February 4, 1994, pp.42-44.
- [83] TSN, November 23, 1994, pp. 15-16; TSN, November 25, 1994, p. 4.
- [84] *Rollo*, pp. 296-301.

[85] 43 SCRA 437 (1972).

- [86] *People vs. Angcap*, *supra*, quoting *People vs. Manalo*, *supra*.
- [87] *Rollo*, p. 93.
- [88] *Id.*
- [89] TSN, November 27, 1995, pp. 15-18. Underscoring supplied.

[90] CODE OF JUDICIAL CONDUCT, SECTION 3.05.

- [91] 105 Phil. 287 (1959).
- [92] *Rollo*, p. 101.
- [93] TSN, November 27, 1995, pp. 20-22. Underscoring supplied.
- [94] Section 6, Rule 132 of the Rules of Court provides that “Upon the termination of the direct examination, the witness may be cross-examined by the adverse party as to any matters stated in the direct examination, or connected therewith, with sufficient fullness and freedom to test his accuracy and truthfulness and freedom from interest of bias, or the reverse, and to elicit all important facts bearing upon the issue.”
- [95] TSN, November 27, 1995, pp. 13-14.
- [96] TSN, November 27, 1995, p. 22.
- [97] RULES OF COURT, RULE 132, Section 8.

- [98] CONSTITUTION, ARTICLE III, Section 14 (2).
- [99] *People vs. Collantes*, 208 SCRA 853 (1992).
- [100] *People vs. Bolasa*, 209 SCRA 477 (1992).
- [101] 353 US 53, 1 L ed 2d 639, 77 S Ct 623 (1957).
- [102] *United States v. Lewis*, 315 F.2d 228 (1963). See also *McCoy v. State*, 140 A.2d 689 (1958).
- [103] *People v. Dewson*, 310 P.2d 1962 (1957).
- [104] TSN, January 8, 1996, pp. 7-8.
- [105] 379 P.2d 209 (1963).
- [106] *State v. Battle*, 199 N.W.2d 70 (1972).
- [107] *Rugendorf v. United States*, 376 US 528, 11 L ed 2d 887, 84 S Ct 825 (1964), citing *Roviaro vs. United States*, *supra*.
- [108] *State v. Battle*, *supra*.
- [109] *People vs. De Vera*, 275 SCRA 87 (1997).
- [110] *Rollo*, p. 487.
- [111] *People vs. Lacerna*, 278 SCRA 561 (1997). See also *People vs. Atad*, 266 SCRA 262 (1997); *People vs. Juatan*, 260 SCRA 532 (1996); *People vs. Ang Chut Kit*, 251 SCRA 660 (1995); *People vs. Flores*, 243 SCRA 374 (1995); *People vs. Utinas*, 239 SCRA 362 (1994); *People vs. Merabueno*, 239 SCRA 197 (1994); *People vs. Manahan*, 238 SCRA 141 (1994); *People vs. Go*, 237 SCRA 73 (1994); *People vs. Garcia*, 235 SCRA 371 (1994); *People vs. Dismuke*, 234 SCRA 51 (1994).
- [112] *Rollo*, p. 104.

[113] 301 SCRA 668 (1999).

- [114] *People vs. Ong Co*, 245 SCRA 733 (1995).
- [115] *People vs. Manahan*, *supra*.
- [116] *People vs. Lacbanes*, *supra*.
- [117] *People vs. Go*, *supra*, citing *People vs. Roldan*, 224 SCRA 536 (1993).
- [118] *Id.*
- [119] TSN, February 9, 1996, p. 15.
- [120] *Id.*, at 8-9.

[121] 241 SCRA 625 (1995).

- [122] TSN, November 14, 1994, p. 9.
- [123] *People vs. Ang Chut Kit*, *supra*.
- [124] *People vs. Rivera*, *supra*, citing cases.

[125] Id.

[126] People vs. Enriquez, 281 SCRA 103 (1997); People vs. Lising, 275 SCRA 807 (1997).

[127] People vs. Lacbanes, supra. See also People vs. Velasco, 252 SCRA 135 (1996); People vs. Nicolas, 241 SCRA 67 (1995); People vs. Gireng, 241 SCRA 11 (1995).

[128] People vs. Tranca, supra; People vs. Agustin, 215 SCRA 725 (1992).

[129] People vs. Enriquez, supra; People vs. Lising, supra.

[130] TSN, May 3, 1996, p.8.

[131] People vs. Enriquez, supra. See also Manalili vs. Court of Appeals, 280 SCRA 400 (1997); People vs. Doroja, 235 SCRA 238 (1994).

[132] People vs. Bolasa, 209 SCRA 476 (1992).

[133] People vs. Lua Chu and Uy Se Tieng, 56 Phil. 44 (1931), quoting 16 Corpus Juris, p.88, sec. 57.

[134] People vs. Balidiata, 222 SCRA 409 (1993).

[135] 212 SCRA 288 (1992).

[136] People vs. De Jesus, 205 SCRA 383 (1992).

[137] People v. Sulit, 233 SCRA 117 (1994).

[138] Republic Act No. 6425.

[139] People vs. Herrera, 247 SCRA 433 (1995).

[140] People vs. Solon, 244 SCRA 554 (1995).

[141] A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. (REVISED PENAL CODE, ARTICLE 8.)

[142] REVISED PENAL CODE, ARTICLE 8.

[143] REVISED PENAL CODE, ARTICLE 115.

[144] 144 REVISED PENAL CODE, ARTICLE 136.144

[145] Id.

[146] REVISED PENAL CODE, ARTICLE 141.

[147] SEC. 21. Attempt and Conspiracy.- The same penalty prescribed by this Act for the commission of the offense shall be imposed in case of any attempt or conspiracy to commit the same in the following cases:

- (a) Importation of dangerous drugs;
- (b) Sale, administration, delivery, distribution and transportation of dangerous drugs;
- (c) Maintenance of a den, dive or resort for prohibited drug users;
- (d) Manufacture of dangerous drugs; and

(e) (e) Cultivation or culture of plants which are sources of prohibited drugs.

[148] Rollo, p. 491.

[149] See *People of the Philippines vs. Berly Fabro y Azucena*, G.R. No. 114261, February 10, 2000.

[150] See *People vs. Garcia*, 235 SCRA 371 (1994).

[151] See *People vs. Montilla*, 285 SCRA 703 (1998). Also *People vs. Valdez*, 304 SCRA 140 (1999); and *People vs. Medina*, 292 SCRA 436 (1998).

[152] 276 SCRA 24 (1997).

[153] *People v. Sulit*, 233 SCRA 117 (1994).

[154] Section 15 in relation to Section 20 (b), R.A. No. 6425, as amended by R.A. No. 7659.

[155] *People vs. Medina*, *supra*.

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