

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. WILLIAM ONG Y LI AND CHING DE MING @ ROBERT TIU, APPELLANTS.

G.R. No. 137348. June 21, 2004

Ponente: PUNO, J.

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PUNO, J.:

“... the allowance of the privilege to withhold evidence that is demonstrably relevant in a criminal trial would cut deeply into the guarantee of due process of law and gravely impair the basic function of the courts.” [1]

Chief Justice Warren E. Burger

The case at bar involves the clash of two classic values - - the need for the State to stop crimes and preserve the peace against the right of an individual to confront material witnesses to establish his innocence. In balancing the two values, we shall scrutinize and set the parameters that ought to guide prosecution when to disclose the identity of confidential informers.

On July 27, 1998 accused William Ong y Li and Ching De Ming @ Robert Tiu were charged with violation of Section 15, Article III, in relation to Section 2, Article I, of Republic Act No. 6425, otherwise known as The Dangerous Drugs Act of 1972, as amended. The Information[2] reads:

That on or about the 24th day of July, 1998 in Quezon City, Philippines, the said accused, conspiring together, confederating with and mutually helping each other not having been authorized by law to sell, dispense, deliver, transport or distribute any regulated drug, did then and there willfully and unlawfully sell or offer for sale 980.50 grams of Methyl Amphetamine Hydrochloride, which is a regulated drug.

CONTRARY TO LAW.

Upon arraignment, the two (2) accused, who are Chinese nationals, pled not guilty. The records do not show whether they had sufficient knowledge of the English language. Their trial proceeded. In the course of the trial, the two (2) accused were given the services of a Chinese interpreter.

The prosecution, through the testimony of SPO1 Rodolfo S. Gonzales, sought to establish that on July 23, 1998 at around 5:00 P.M., a confidential informant (CI) of the Special Operations Division (SOD), PNP Narcotics Group, reported to Chief Inspector Albert Ignatius D. Ferro about the alleged illicit drug activities of a certain William Ong and an unidentified Chinese male partner. After an evaluation of the confidential information, Chief Inspector Ferro decided to conduct a buy-bust operation. He constituted a team of eight (8) with Police Inspector Medel N. Poñe as team leader, SPO1 Gonzales as poseur-buyer and the rest as back-up support.

According to SPO1 Gonzales, the CI called up the alleged pusher, placed an order for one (1) kilo of shabu and agreed to a P600,000.00 consideration. The CI likewise agreed to meet with his contact on July 24, 1998 at 6th Street corner Gilmore Avenue, New Manila, Quezon City, between 4:00 and 5:00 A.M. The boodle money was prepared consisting of six (6) bundles of cut bond paper with a marked P1,000.00 peso bill on top of each bundle.

On July 24, 2004 at 3:00 A.M., the CI received a call from the drug dealer changing the meeting time between 2:00 and 3:00 P.M. on the same day. The team, together with the CI, proceeded to the meeting place and arrived there at around 1:30 P.M. The CI rode with SPO1 Gonzales. They parked their car along 6th Street corner Gilmore Avenue. The rest of the team posted themselves at their back and their right side.

A little while, accused Ong approached their car. The CI introduced him to SPO1 Gonzales who told accused Ong in broken Tagalog to get in the car. When Ong inquired about the money in payment of the shabu, SPO1 Gonzales showed him the slightly opened plastic bag containing the boodle money. SPO1 Gonzales then demanded to see the shabu. Accused Ong excused himself, went out of the car, walked a few steps and then waved his right hand to somebody. While accused Ong was walking back to the car, SPO1 Gonzales and the CI saw a green Toyota Corolla coming. The Corolla parked in front of their car and a Chinese-looking male, later identified as accused Ching De Ming @ Robert Tiu alighted, approached accused Ong and handed to him a gift-wrapped package. SPO1 Gonzales opened it and inside was one (1) sealed plastic bag with a white crystalline substance. After its inspection, accused Ong demanded for its payment. SPO1 Gonzales gave to accused Ong the boodle money placed in a "W. Brown" plastic bag. Thereafter, SPO1 Gonzales signaled his back-up team by turning on the hazard lights of the car. SPO1 Gonzales himself arrested accused Ong while the CI and the back-up agents arrested accused De Ming.

The officers brought the two (2) accused to their office where the corresponding booking sheets and arrest report were prepared. The plastic bag containing the white crystalline substance was referred to the PNP Crime Laboratory for examination. The two (2) accused were subjected to a physical and mental examination as required. They were found to be free from any external signs of trauma.

Police Inspector Grace M. Eustaquio, Forensic Chemist, PNP Crime Laboratory, testified that the specimen she examined had a net weight of 980.50 grams and manifested "positive results for methyl amphetamine hydrochloride"[3] or what is commonly known as shabu, a regulated drug. Her testimony was supported by her Physical Sciences Report.[4]

Appellants denied the story of the prosecution. Accused William Ong, a Chinese citizen from the People's Republic of China, claimed that he came to the Philippines in 1997 to look for a job. Upon the recommendation of a friend, he was able to work in a pancit canton factory in Quezon City. In June 1998, he stopped working at the factory and hunted for another job. Two (2) weeks prior to his arrest, accused Ong was introduced by his friend Kian Ling to Ong Sin for a possible job as technician in a bihon factory owned by Ong Sin.

On July 22, 1998, Ong Sin called up and set a meeting with accused Ong at the Tayuman branch of Jollibee the next day. While waiting at Jollibee, accused Ong received a call from Ong Sin that he could not personally meet him. Instead, his two (2) co-workers would meet accused Ong as instructed. Subsequently, two (2) men answering to Ong Sin's description approached accused Ong. He joined them inside a yellow car. When they reached a certain place, the driver reached for his cellular phone and called up someone. After a brief conversation, the driver handed the phone to him. Ong Sin was on the line and informed him that the driver would accompany him to the bihon factory. The driver got out of the car and accused Ong followed him. After walking two (2) blocks, the driver picked up something from the place. They returned to the car. Suddenly, the companion of the driver poked a gun at him. He was arrested, blindfolded and brought to an undisclosed place. Several hours later, he was taken to the police station. There he met the other accused Ching De Ming for the first time. He maintained innocence to the crime charged.

On his part, accused Ching De Ming testified that he is a legitimate businessman engaged in the RTW business. He claimed that he gets his products from Baclaran and sells them to customers in the cities of Naga and Daet in

Bicol.

On July 23, 1998 at around 4:30 and 5:00 P.M., while waiting inside his car for his girlfriend and her mother who just went in a townhouse at 8th Street, New Manila, Quezon City, he was approached by persons unknown to him. They asked him what he was doing there. One of them went to the car parked at his back, ordered somebody inside to get out and take a good look at him. The person pointed at him saying “maybe he is the one.” He was then dragged out of his car and brought to the other car. They took his clutch bag. They blindfolded and brought him to a place. After a few hours, at Camp Crame, Quezon City, they removed his blindfold. He denied knowing accused Ong and the charge of conspiring with him to deliver shabu in New Manila, Quezon City.

Avelina Cardoz, the mother of his girlfriend, and a divine healer, corroborated his story. She testified that she requested accused De Ming to drive her to a townhouse at 8th Street, New Manila, to cure a patient. She declared that the officers of the People’s Journal publication could attest to her profession. She asked accused De Ming to wait for her and her daughter inside his car. When they returned to the car, accused De Ming was nowhere to be found. They saw him next at the Quezon City Jail.

On November 18, 1998 the trial court convicted appellants as charged and imposed on them the penalty of death. It likewise ordered each of them to pay a fine of P1 million pesos.[5]

The case is with us on automatic review. Appellants insist on their innocence. They claim that their guilt was not proven beyond reasonable doubt.

We agree.

I

Rule 116, Section 1 (a) of the Revised Rules of Criminal Procedure, as amended, provides:

SECTION 1. Arraignment and plea; how made.-

(a) The accused must be arraigned before the court where the complaint or information was filed or assigned for trial. The arraignment shall be made in open court by the judge or clerk by furnishing the accused with a copy of the complaint or information, reading the same in the language or dialect known to him, and asking him whether he pleads guilty or not guilty. The prosecution may call at the trial witnesses other than those named in the complaint or information. (Underscoring and emphasis supplied.)

The arraignment of appellants violates the above rule. Appellants are Chinese nationals. Their Certificate of Arraignment[6] states that they were informed of the accusations against them. It does not, however, indicate whether the Information was read in the language or dialect known to them. It merely states:

This 4[th] day of Aug., 1998, the undersigns (sic) states:

That, in open court, and in the presence of Trial Prosecutor Ruben Catubay, the following accused William Ong and Ching De Ming AKA Robert Tiu was/were called and, having been informed of the nature of the accusation filed against him/her/them, furnishing him/her/them a copy of the complaint or information with the list of witnesses, the said accused in answer to the question of the Court, pleaded Not Guilty to the crime as charged.

TO WHICH I CERTIFY.

Sgd. Mary Ruth Milo-Ferrer
Branch Clerk of Court

Sgd. William Ong
ACCUSED WILLIAM ONG

Sgd. Ching de Ming

ACCUSED CHING DE MING @ ROBERT TIU

Neither does the August 4, 1998 Order of Judge Diosdado M. Peralta of RTC-Br. 95, Quezon City, disclose compliance with the rule on arraignment. It merely stated in part that “[w]hen both accused William Ong y Li and Ching De Ming @ Robert Tiu were arraigned, assisted by counsel de parte, both accused entered a plea of not guilty.”[7]

From the records, it is clear that appellants only knew the Chinese language. Thus, the services of a Chinese interpreter were used in investigating appellants. SPO1 Rodolfo S. Gonzales revealed in his testimony, viz:[8]

Q:

Now, is it not a fact that you had the difficulty of investigating the two accused because of communication problem from your informant?

A:

We did not encounter such problem when we investigated them sir. We also asked question and we have another Chinese who was arrested who can speak Tagalog and we used that Chinese man to translate for us and for them if the questions are difficult to understand, sir.

Q: Now that Chinese interpreter that is also an accused?

A: Yes sir.[9]

After arraignment and in the course of the trial, the lower court had to secure the services of a certain Richard Ng Lee as Chinese interpreter. This appears in the Order of August 28, 1998 of Judge Peralta, viz:

Considering that the counsel of the two (2) accused has still a lot of questions to ask on cross-examination x x x From hereon, Mr. Richard Ng Lee, a businessman and a part time interpreter, is hereby designated by the Court as interpreter in this case considering that there is no official interpreter of the Court who is knowledgeable in the Chinese language or any Chinese dialect whatsoever. The appointment of Mr. Richard Ng Lee is without the objection of counsel of the accused and the public prosecutor and considering that the court is convinced that he indeed possesses the qualifications of an interpreter of a Chinese language or any other Chinese dialect known and spoken by the two (2) accused.[10] (Emphasis supplied.)

What leaps from the records of the case is the inability of appellants to fully or sufficiently comprehend any other language than Chinese and any of its dialect. Despite this inability, however, the appellants were arraigned on an Information written in the English language.

We again emphasize that the requirement that the information should be read in a language or dialect known to the accused is mandatory. It must be strictly complied with as it is intended to protect the constitutional right of the accused to be informed of the nature and cause of the accusation against him. The constitutional protection is part of due process. Failure to observe the rules necessarily nullifies the arraignment.[11]

II

More important than the invalid arraignment of the appellants, we find that the prosecution evidence failed to prove that appellants willfully and unlawfully sold or offered to sell shabu.

Appellants' conviction is based on the lone testimony of SPO1 Gonzales. He was the designated poseur-buyer in the team formed for the buy-bust operation. But a careful reading of his testimony will reveal that he was not privy to the sale transaction that transpired between the CI and appellant William Ong, the alleged pusher. It is beyond contention that a contract of sale is perfected upon a meeting of the minds of the parties on the object and

its price.[12] Not all elements of the sale were established by the testimony of SPO1 Gonzales, viz:

PROSECUTOR to SPO1 GONZALES

Q:

After you have prepared the boodle money and you had made the proper marking which you presented before this Honorable Court, what happen?

A: Out CI make a couple of call and he contacted William Ong thru a broken tagalog conversation.

Q: When your CI contacted with William Ong in broken tagalog?

A:

I have a conversation with William Ong in broken tagalog the deal of one kilo gram of shabu was initially closed.

Q: When you say “closed”, what do you mean by that?

A: They agreed to the sale of the shabu.

ATTY. TRINIDAD (counsel of accused) to the COURT

We object to the line of questioning, Your Honor that would be hearsay.

COURT:

I think what you were asking is what happened he said it was the CI who talked.

PROSECUTOR to SPO1 GONZALES

Q: So after that, do you know what happen?

A: The CI informed us that the price of that shabu which we’re supposed to buy from them amounts to 600,000.00 pesos, ma’am.

Q: Where did you come to know about this information that the amount is already 600,000.00 pesos?

ATTY. TRINIDAD to the COURT

Already answered, Your Honor.

COURT:

In other words what he say is that, there was a telephone conversation but he has no personal knowledge. Your question then was what happened.

PROSECUTOR to SPO1 GONZALES

Q: After the CI informed you that the price of the shabu is 600,000.00 pesos?

A: We prepared this boodle money and the 6,000 by our Chief SOD.

COURT to SPO1 GONZALES

Q:

After the informant told you that there was an agreement to sell 600,000.00 pesos and that you have already prepared the boodle money as you have stated, what happened after that?

A: The CI told us that the transaction is 600,000.00 pesos and venue is at 6th Street, corner Gilmore Avenue, New Manila, Quezon City, between 4 o'clock to 5 o'clock in the morning of July 24, 1998, ma'am.

Q:

So when the CI informed you that they will meet at 6th Street, New Manila, Quezon City, what transpired next?

A:

On or about 3 o'clock in the morning William Ong made a call to our CI informing him that the sale of the delivery of shabu was reset to another time.[13]

x x x x

PROSECUTOR to SPO1 GONZALES

Q: And when you were informed that there was a resetting of this deal?

COURT to SPO1 GONZALES

Q:

How did you come to know that there was a resetting because he has no participation in the conversation and it was the CI according to him and the alleged poseur-buyer.

A: The CI told our Chief Deputy.

ATTY. TRINIDAD to the COURT

That would be hearsay, Your Honor, and that would be a double hearsay.

COURT

Put on record that the counsel manifested that his answer is again hearsay and that a double hearsay evidence.

PROSECUTOR to SPO1 GONZALES

Q: And what did the CI do?

A:

The CI informed us that the time will be at about 2 to 3 o'clock in the afternoon of that same day and the place.[14]

It is abundantly clear that it was the CI who made the initial contact, albeit only through the telephone, with the pusher. The CI was likewise the one who closed the deal with appellant Ong as to the quantity of shabu to be purchased and its price. He also set the venue and time of the meeting when the sale would take place. The Joint Affidavit of Arrest[15] executed by SPO1 Gonzales, PO2 Elmer N. Sarampote and PO1 Noli Jingo G. Rivel fortifies these facts, viz:

x x x x

That after couple of calls made by our CI, suspect WILLIAM ONG was finally contacted on or about 9:30 in the evening of July 23, 1998 and through a broken Tagalog conversation, a drug deal/sale was initially closed in the agreed amount of six hundred thousand pesos (P600,000.00) and the agreed venue is at the corner of 6th Street and Gilmore Avenue, New Manila, Quezon City between 4:00 and 5:00 o'clock in the morning of July 24, 1998 through "Kaliwaan or Abutan" (Cash upon Delivery);

That said information was relayed to our Deputy Chief, who upon learning said report, immediately grouped and briefed the team for the said operation;

x x x x

That on or about 3:00 o'clock in the morning of July 24, 1998, WILLIAM ONG made a call to our CI informing him (CI) to reset the time of the drug deal/sale of one (1) kilogram of SHABU and it was scheduled again between 2:00 to 3:00 o'clock in the afternoon of same date and same place;

It is therefore understandable that in his account of his meeting with appellant William Ong, SPO1 Gonzales made no reference to any further discussion of the price and the quantity of the shabu. When they met, they just proceeded with the exchange of money and shabu, viz:

PROSECUTOR to SPO1 GONZALES

Q: And when you were there stationed at the venue at 6th Street, New Manila, Quezon City, what happened?

A:

I and the CI parked our car at 6th Street corner Gilmore Avenue and then we saw William Ong emerged from Gilmore Avenue and approached me and our CI, ma'am.[16]

x x x x

Q: And when he approached you what did you do if any?

A:

Our CI introduced me to William Ong as an interested buyer of one kilo gram of shabu and afterwards I asked William Ong in broken tagalog to get inside the car.[17]

x x x x

Q: And while inside the car, what happened next?

A:

While inside the car William Ong asked me about the payment of the stuff and I got the paper bag and slightly opened. So that I get the plastic bag and show to William Ong the boodle money.

Q: When you showed the boodle money to William Ong what did he do if there was any?

A: He looked at it, ma'am.

Q: And when he looked at it what happened next?

A: I told him that I should look at the stuff before I give the money.

Q: What stuff are you referring to?

A: The shabu, ma'am

Q:

And what did you do after expecting the boodle money or the bag where the boodle money was placed, if there was any?

A: He excused himself and alighted from our car and told me to wait for his companion.

Q: And where you able to wait for that male companion he is referring to?

A: He walked a distance and waved at his companion as if somebody will come to him.

Q: How did he do that?

A:

(put on record that the witness when answering the question he stood up and then used his right hand in waving as if he is calling for somebody)

Q: When William Ong waved his right hand to his companion what happened?

A: William Ong walked towards to me and suddenly a green Toyota appeared and parked in front of our car.

Q: When a green Toyota corolla was parked in front of the car, what happened next?

A:

Chinese looking male person alighted from the car and he went to William Ong and handed to William Ong something that was gift wrapped.[18]

x x x x

Q: When that thing was handed to William Ong which identified in Court and which was marked, what did William Ong do?

A: William Ong took it from Ching De Ming, ma'am.

Q: When this Exhibit was given to by William Ong what did you do in return?

A:

I opened that something which was gift wrapped and I saw one sealed plastic bag containing white crystalline substance suspected to be a shabu.[19]

x x x x

Q: When you saw this Exhibit C-2 crystalline substance which was opened according to you. What did you do?

A: The companion of William Ong demanded to me the money and I gave to him the boodle money.

Q: When you gave the boodle money to him, what did he do if any these person who secured the money?

A: He took the money inside the bag.[20]

Since only the CI had personal knowledge of the offer to purchase shabu, the acceptance of the offer and the consideration for the offer, we hold that SPO1 Gonzales is, in effect, not the "poseur-buyer" but merely the deliveryman. His testimony therefore on material points of the sale of shabu is hearsay and standing alone cannot be the basis of the conviction of the appellants.[21]

III

We further hold that the prosecution failed to establish its claim of entrapment.

A buy-bust operation is a form of entrapment, which in recent years has been accepted as a valid means of arresting violators of the Dangerous Drugs Law.[22] It is commonly employed by police officers as an effective way of apprehending law offenders in the act of committing a crime.[23] In a buy-bust operation, the idea to commit a crime originates from the offender, without anybody inducing or prodding him to commit the offense.[24] Its opposite is instigation or inducement, wherein the police or its agent lures the accused into

committing the offense in order to prosecute him.[25] Instigation is deemed contrary to public policy and considered an absolutory cause.[26]

To determine whether there was a valid entrapment or whether proper procedures were undertaken in effecting the buy-bust operation, it is incumbent upon the courts to make sure that the details of the operation are clearly and adequately laid out through relevant, material and competent evidence. For, the courts could not merely rely on but must apply with studied restraint the presumption of regularity in the performance of official duty by law enforcement agents. This presumption should not by itself prevail over the presumption of innocence and the constitutionally protected rights of the individual.[27] It is the duty of courts to preserve the purity of their own temple from the prostitution of the criminal law through lawless enforcement.[28] Courts should not allow themselves to be used as instruments of abuse and injustice lest innocent persons are made to suffer the unusually severe penalties for drug offenses.[29]

In *People v. Doria*,[30] we stressed the “objective” test in buy-bust operations. We ruled that in such operations, the prosecution must present a complete picture detailing the transaction, which “must start from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale.[31] We emphasized that the manner by which the initial contact was made, the offer to purchase the drug, the payment of the ‘buy-bust’ money, and the delivery of the illegal drug must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense.”[32]

In the case at bar, the prosecution evidence about the buy-bust operation is incomplete. The confidential informant who had sole knowledge of how the alleged illegal sale of shabu started and how it was perfected was not presented as a witness. His testimony was given instead by SPO1 Gonzales who had no personal knowledge of the same. On this score, SPO1 Gonzales’ testimony is hearsay and possesses no probative value unless it can be shown that the same falls within the exception to the hearsay rule.[33] To impart probative value to these hearsay statements and convict the appellant solely on this basis would be to render nugatory his constitutional right to confront the witness against him, in this case the informant, and to examine him for his truthfulness.[34] As the prosecution failed to prove all the material details of the buy-bust operation, its claim that there was a valid entrapment of the appellants must fail.

IV

The Court is sharply aware of the compelling considerations why confidential informants are usually not presented by the prosecution. One is the need to hide their identity and preserve their invaluable service to the police.[35] Another is the necessity to protect them from being objects or targets of revenge by the criminals they implicate once they become known. All these considerations, however, have to be balanced with the right of an accused to a fair trial.

The ruling of the U.S. Supreme Court in *Roviaro v. U.S.*[36] on informer’s privilege is instructive. In said case, the principal issue on certiorari is whether the United States District Court committed reversible error when it allowed the Government not to disclose the identity of an undercover employee who had played a material part in bringing about the possession of certain drugs by the accused, had been present with the accused at the occurrence of the alleged crime, and might be a material witness to whether the accused knowingly transported the drugs as charged.[37] The Court, through Mr. Justice Burton, granted certiorari in order to pass upon the propriety of disclosure of the informer’s identity.

Mr. Justice Burton explained that 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.[38] 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.

It was held that the scope of the privilege is limited by its underlying purpose. Thus, where the disclosure of the contents of the communication will not tend to reveal the identity of an informer, the contents are not privileged.[39] 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.[40]

A further limitation on the applicability of the privilege, which arises from the fundamental requirements of fairness was emphasized. Where the disclosure of an informer's identity, or 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.[41] In these situations, the trial court may require disclosure and dismiss the action if the Government withholds the information.[42]

In sum, there is no fixed rule with respect to disclosure of the identity of an informer. The problem has to be resolved on a case to case basis and calls for balancing the state interest in protecting people from crimes against the individual's right to prepare his defense. The balance must be adjusted by giving due weight to the following factors, among others: (1) the crime charged, (2) the possible defenses, (3) the possible significance of the informer's testimony, and (4) other relevant factors.[43]

In the case at bar, the crime charged against the appellants is capital in character and can result in the imposition of the death penalty. They have foisted the defense of instigation which is in sharp contrast to the claim of entrapment by the prosecution. The prosecution has to prove all the material elements of the alleged sale of shabu and the resulting buy-bust operation. Where the testimony of the informer is indispensable, it should be disclosed. The liberty and the life of a person enjoy high importance in our scale of values. It cannot be diminished except by a value of higher significance.

V

Moreover, the mishandling and transfer of custody of the alleged confiscated methyl amphetamine hydrochloride or shabu further shattered the case of the prosecution. There is no crime of illegal sale of regulated drug when there is a nagging doubt on whether the substance confiscated was the same specimen examined and established to be regulated drug.

After the arrest of the appellants, the records show that the substance allegedly taken from them was submitted to the PNP Crime Laboratory for examination upon request of the Chief of the SOD Narcotics Group, Quezon City.[44] Police Inspector Grace M. Eustaquio, Forensic Chemist, PNP Crime Laboratory, testified that the qualitative examination she conducted manifested "positive results for methyl amphetamine hydrochloride" with net weight of 980.50 grams.[45] This is not in dispute. The issue is whether the substance examined was the same as that allegedly confiscated from appellants.

The Joint Affidavit of Arrest[46] merely states that the evidence confiscated was submitted to the "PNP Crime Laboratory Group for qualitative examination." SPO1 Gonzales testified on direct examination that:

Q: When you arrested them according to you, what other steps did you take if any?

A:

We brought them to our office and we requested the crime laboratory Camp Crame to test the suspected shabu that we recovered from both of them.[47]

On cross-examination, the defense only got this statement from SPO1 Gonzales regarding the evidence allegedly confiscated:

Q: And you immediately brought him to your office at Camp Aguinaldo?

A:

After we gathered the evidences we turned them over to our office, sir.[48]

Clearly, there was no reference to the person who submitted it to the PNP Crime Laboratory for examination. It is the Memorandum-Request for Laboratory Examination[49] which indicates that a certain SPO4 Castro submitted the specimen for examination. However, the rest of the records of the case failed to show the role of SPO4 Castro in the buy-bust operation, if any. In the Joint Affidavit of Arrest, the only participants in the operation were enumerated as SPO1 Gonzales as the poseur-buyer, Police Inspector Medel M. Poñe as the team leader with PO2 Elmer N. Sarampote and PO1 Noli Jingo G. Rivel as back-up support.[50] Other members of the team who acted as perimeter security were not identified. In fact, when SPO1 Gonzales was asked during the trial as to their identities, he was only able to name another member of the team:

Q: When you say “team,” who compose the team?

A: I and more or less eight (8) person, ma’am.

Q: Can you name the member of the team?

A:

Our team led by Inspector Medel Poñe, I myself, PO2 Elmer Sarampote, PO1 Noli Jingo G. Rivel, SPO3 Ronaldo Sayson, and I can not remember the others, ma’am.[51]

These are questions which cannot be met with a lockjaw. Since SPO4 Castro appears not to be a part of the buy-bust team, how and when did he[52] get hold of the specimen examined by Police Inspector Eustaquio? Who entrusted the substance to him and requested him to submit it for examination? For how long was he in possession of the evidence before he turned it over to the PNP Crime Laboratory? Who else had access to the specimen from the time it was allegedly taken from appellants when arrested? These questions should be answered satisfactorily to determine whether the integrity of the evidence was compromised in any way. Otherwise, the prosecution cannot maintain that it was able to prove the guilt of the appellants beyond reasonable doubt.

VI

Finally, the denials and proffered explanations of appellants assume significance in light of the insufficiency of evidence of the prosecution.

Appellant Ong testified that he was arrested on July 23, 1998 when he was scheduled to meet with a certain Ong Sin for a possible job as technician in a bihon factory. On his part, appellant De Ming claimed that when he was arrested on July 23, 1998, he was in the area waiting for his girlfriend and her mother who just went inside a townhouse at 8th Street, New Manila, Quezon City. His girlfriend’s mother, Avelina Cardoz, confirmed his explanation. The prosecution tells a different story, the uncorroborated story of SPO1 Gonzales that their team entrapped the appellants in a buy-bust operation on July 24, 1998. Our minds rest uneasy on the lone testimony of SPO1 Gonzales.

WHEREFORE, the Decision of the court a quo is REVERSED and SET ASIDE. Appellants WILLIAM ONG y LI and CHING DE MING @ ROBERT TIU, are ACQUITTED of the crime of violation of Section 15, Article III, in relation to Section 2, Article I of R.A. No. 6425, otherwise known as The Dangerous Drugs Act of 1972, as

amended, and are ordered immediately released from custody unless held for some other lawful cause.

The Director of Prisons is DIRECTED to implement this decision immediately and to inform this Court within five (5) days from receipt of this decision of the date the appellants are actually released from confinement. Costs de officio.

SO ORDERED.

Davide, Jr., C.J., Panganiban, Quisumbing, Sandoval-Gutierrez, Carpio, Austria-Martinez, Carpio-Morales, Callejo, Sr., Azcuna, and Tinga, JJ., concur.

Vitug, and Corona, JJ., on official leave.

Ynares-Santiago, J., on leave.

[1] United States v. Nixon, 418 U.S. 683, 94 S.Ct. 3090, 41 L.Ed.2d 1039 (1974).

[2] Original Records, p. 1.

[3] Also referred to as methamphetamine hydrochloride.

[4] No. D-2036-98 dated July 24, 1998, Original Records, p. 12; TSN, Direct Examination, August 14, 1998, pp. 13-14.

[5] Decision penned by Judge Diosdado Madarang Peralta, RTC-Br. 95, Quezon City; Original Records, pp. 77-88.

[6] Original Records, p. 20.

[7] Original Records, p. 22.

[8] All TSNs are quoted verbatim. Formal and grammatical errors are not corrected.

[9] TSN, Continuation of Cross-Examination, September 7, 1998, pp. 6-7.

[10] Original Records, p. 29.

[11] People v. Asoy, G.R. No. 132059, June 29, 2001.

[12] Article 1475, New Civil Code; cited in People v. Boco, 309 SCRA 42 [1999].

[13] TSN, Direct Examination, August 25, 1998, pp. 12-15.

[14] Id., at pp. 15-16.

[15] Original Records, pp. 5-7

[16] See note 13 at pp. 17-18.

[17] Id., at p. 19.

[18] Id., at pp. 17-23.

[19] Id., at p. 24.

[20] Id., at pp. 25-26.

[21] See People v. Libag, 184 SCRA 707 [1990].

[22] *People v. Boco*, supra, citing *People v. Juatan*, 260 SCRA 532 [1996]; *People v. Macasa*, 229 SCRA 422 [1994].

[23] *Id.*, citing *People v. Doria*, 301 SCRA 668 [1999]; *People v. Basilgo*, 235 SCRA 191 [1994].

[24] *Id.*, citing *People v. Yumang*, 222 SCRA 119, 123 [1993], quoting *People v. Ramos Jr.*, 203 SCRA 237 [1991].

[25] *Id.*, citing *People v. Manalo*, 230 SCRA 309, 317 [1994] quoting *People v. Ramos Jr.*, *ibid*; *People v. Basilgo*, supra, quoting from *People v. Juma*, 220 SCRA 432 [1993].

[26] *Id.*, citing *People v. Doria*, supra.

[27] *People v. Doria*, supra, citing *Tambasen v. People*, 246 SCRA 184 [1995]; *People v. Rigodon*, 238 SCRA 27 [1994]; *People v. Cruz*, 231 SCRA 759, 771 [1994].

[28] *Id.*, citing *Sorrels v. United States*, 287 U.S. at 457, Roberts, J., concurring.

[29] See note 27.

[30] *Id.*

[31] *Id.*, citing *People v. Tadepa*, 244 SCRA 339, 341-342 [1995]; *People v. Crisostomo*, 222 SCRA 511, 515 [1993].

[32] *Id.*

[33] *People v. Villaviray*, 262 SCRA 13 [1996] citing *Eugenio v. Court of Appeals*, 239 SCRA 146 [1994]; *Baguio v. Court of Appeals*, 226 SCRA 366 [1993].

[34] *Id.*, citing *People v. Damaso*, 212 SCRA 547 [1992].

[35] *People v. Khor*, 307 SCRA 295 [1999], citing *People v. Gireng*, 241 SCRA 11 [1995].

[36] 353 U.S. 53, 77 S.Ct. 623, 1 L.Ed.2d 639.

[37] In *Portolome v. United States*, 5 Cir., 221 F.2d 582; *United States v. Conforti*, 7 Cir., 200 F.2d 365; and, *Sorrentino v. United States*, 9 Cir., 163 F.2d 627, 629, the same issue was raised – the Government's right to withhold the identity of an informer who helped to set up the commission of the crime and who was present at the occurrence. In each case, it was held that the identity of such informer must be disclosed whenever the informer's testimony may be relevant and helpful to the accused's defense.

[38] *Id.*, *Scher v. United States*, 305 U.S. 251, 254, 59 S.Ct. 174, 176, 83 L.Ed. 151; *In re Quarles and Butler*, 158 U.S. 532, 15 S.Ct. 959, 39 L.Ed. 1080; *Vogel v. Gruaz*, 110 U.S. 311, 316, 4 S.Ct. 12, 14, 28 L.Ed. 158.

[39] *Id.*, *Foltz v. Moore McCormack Lines*, 189 F.2d 537, 539-540; VIII Wigmore, *Evidence* (3d ed. 1940), s 2374(1); A.L.I., *Model Code of Evidence* (1942), Rule 230. But cf. *In re Quarles and Butler*, supra; *Vogel v. Gruaz*, supra.

[40] *Id.*, *Sorrentino v. United States*, supra; *Pihl v. Morris*, 319 Mass. 577, 578-580, 66 N.E.2d 804, 805-806; *Commonwealth v. Congdon*, 265 Mass. 166, 174-175, 165 N.E. 467, 470; *Regina v. Candy*, cited 15 M. & W. 175; VIII Wigmore, *Evidence* (3d ed. 1940), s 2374(2).

[41] *Id.*, see, e.g., *Scher v. United States*, supra; *Wilson v. United States*, 3 Cir., 59 F.2d 390; *Centoamore v. State*, 105 Neb. 452, 181 N.W. 182. Early decisions established that the scope of the privilege was in the discretion of

the trial judge. Disclosure was compelled when he found it ‘material to the ends of justice.’

[42] *Id.*, see *United States v. Coplon*, 2 Cir., 185 F.2d 629, 638; *United States v. Andolschek*, 2 Cir., 142 F.2d 503, 506.

Most of the federal cases involving this limitation on the scope of the informer’s privilege have arisen where the legality of a search without a warrant is in issue and the communications of an informer are claimed to establish probable cause. In these cases the Government has been required to disclose the identity of the informant unless there was sufficient evidence apart from his confidential information. (*Id.*, e.g., *Scher v. United States*, *supra*; *United States v. Li Fat Tong*, 2 Cir., 152 F.2d 650; *Wilson v. United States*, *supra*; *United States v. Keown*, D.C., 19 F.Supp. 639).

[43] *Id.*

[44] Memorandum Request for Laboratory Examination dated July 24, 1998, Original Records, p. 11.

[45] See note 4.

[46] See note 15.

[47] See note 13, at p.31.

[48] See note 9, at p. 3.

[49] See note 44.

[50] See note 15.

[51] See note 13, at pp. 7-8.

[52] Maybe a female but referred to as male considering the ratio of men and women in the PNP.

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