

EN BANC

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

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

D E C I S I O N

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.

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 4th 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 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