

## EN BANC

[ G.R. Nos. 130568-69, March 21, 2000 ]

### PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CHE CHUN TING ALIAS "DICK," ACCUSED-APPELLANT.

#### DECISION

##### BELLOSILLO, J.:

CHE CHUN TING alias "DICK," a Hong Kong national, was found guilty by the trial court on 22 August 1997 of delivering, distributing and dispatching in transit 999.43 grams of *shabu*;<sup>[1]</sup> and, having in his custody, possession and control 5,578.68 grams of the same regulated drug.<sup>[2]</sup> He was meted two (2) death sentences, one for violation of Sec. 15 and the other for violation of Sec. 16, both of Art. III, of RA 6425 (*The Dangerous Drugs Act of 1972, as amended*).<sup>[3]</sup> He was likewise ordered to pay a fine of P1,000,000.00 in the first case, and P12,000,000.00 in the second.<sup>[4]</sup> He is now before us on automatic review.

The antecedent facts: Following a series of buy-bust operations, the elements of the Special Operation Unit, Narcotics Command, apprehended a suspected drug courier, Mabel Cheung Mei Po, after she delivered a transparent plastic bag containing a white crystalline substance to an informant, in full view of NARCOM agents. When questioned, Mabel Cheung Mei Po cooperated with the government agents and revealed the name of accused Che Chun Ting as the source of the drugs. Misspped

On 27 June 1996 the Narcotics Command deployed a team of agents for the entrapment and arrest of Che Chun Ting. The team was composed of Major Marcelo Garbo, a certain Captain Campos,<sup>[5]</sup> P/Insp. Raymond Santiago, SPO3 Renato Campanilla, and a civilian interpreter. The members of the NARCOM team were in two (2) vehicles: a Nissan Sentra Super Saloon driven by Mabel with P/Insp. Santiago and SPO3 Campanilla as passengers; and the other vehicle, with Major Garbo, Captain Campos and the civilian interpreter on board. At around 7 o'clock in the morning they proceeded to the Roxas Seafront Garden in Pasay City where Che Chun Ting was and had the place under surveillance. Later, they moved to the McDonald's parking lot where the civilian interpreter transferred to the Nissan car. Mabel then called Che Chun Ting through her cellular phone and spoke to him in Chinese. According to the interpreter, who translated to the NARCOM agents the conversation between Mabel and Che Chun Ting, Mabel ordered one (1) kilo of *shabu*.

At around 10:30 o'clock in the morning of the same day, Mabel received a call from the accused that he was ready to deliver the stuff. She immediately relayed the message to the NARCOM agents. After receiving the go-signal from Major Garbo, P/Insp. Santiago, SPO3 Campanilla and Mabel proceeded to the Roxas Seafront Garden. The other vehicle followed but trailed behind within reasonable distance to

serve as a blocking force.

Upon arriving at the Roxas Seafront Garden, Mabel honked twice and went to Unit 122. The two (2) NARCOM agents, who waited inside the car parked two (2) meters away, saw the door of the unit open as a man went out to hand Mabel a transparent plastic bag containing a white crystalline substance. The NARCOM agents immediately alighted and arrested the surprised man who was positively identified by Mabel as Che Chun Ting. Then the agents radioed their superiors in the other car and coordinated with the security guard on duty at the Roxas Seafront Garden to make a search of Unit 122. During the search SPO3 Campanilla seized a black bag with several plastic bags containing a white crystalline substance in an open cabinet at the second floor. The bag was examined in the presence of Major Garbo, the accused himself, and his girlfriend Nimfa Ortiz. The accused together with the evidence was then brought to Camp Crame where Forensic Chemist P/Sr. Inspector Julita T. de Villa after conducting laboratory tests found the white crystalline substance to be positive for *methylamphetamine hydrochloride* or *shabu*.<sup>[6]</sup> Spurred

The defense has a different version. Nimfa Ortiz narrated that she sent her brother Noli Ortiz to meet Mabel Cheung Mei Po in front of the Allied Bank at the EDSA Extension to help the latter find a lawyer and at the same time get the laser disc she lent to Mabel. Noli testified that when he got inside the car of Mabel a policeman sitting at the back of the car suddenly hit him on the head. The car then proceeded to McDonald's at Roxas Boulevard near the Roxas Seafront Garden where he was moved to another car, a green Nissan Sentra, with Major Garbo, Captain Lukban and a certain Palma (perceived to be the civilian interpreter) on board. Mabel stayed behind at McDonald's until she was brought back to Camp Crame.

Noli Ortiz, Major Garbo, Captain Lukban and Palma went to the Roxas Seafront Garden where they parked the car five (5) to seven (7) meters away from Unit 122. Noli rang the doorbell of the unit. When Nimfa opened the door, two (2) NARCOM officers suddenly forced their way inside and searched the premises. Noli denied having seen any black bag seized by SPO3 Campanilla; instead, what he saw was his sister's video camera being carted away by the NARCOM agents. He further testified that when his sister was made to sign a certification on the conduct of the search on Unit 122 she was frightened and crying. He claimed that accused Che Chun Ting was then asleep at the second floor of the unit.

The defense presented documents showing that the owner of Unit 122 was Nimfa Ortiz and not accused Che Chun Ting who lived at 1001 Domingo Poblete St., BF Homes, Paranaque.<sup>[7]</sup> This information, according to the defense, was vital for purposes of ascertaining the legality of the search on Unit 122 as well as the seizure therein of a black bag containing several plastic bags of *shabu*. Finally, the defense assailed the lower court for relying on the testimony of Mabel who turned hostile witness in the course of the trial.<sup>[8]</sup>

Accused Che Chun Ting now contends that the trial court erred: (a) in convicting him on the basis of the *shabu* seized inside Unit 122, which was constitutionally inadmissible as evidence since it was seized without a search warrant; (b) in failing to recognize that the testimony of Mabel Cheung Mei Po, who turned hostile witness in the course of the trial, has discredited the prosecution case and cast doubt on the testimonies of P/Insp. Santiago and SPO3 Campanilla; and, (c) in assuming that the

entire white crystalline substance seized is positive for *methylamphetamine hydrochloride*. Josped

We resolve. The 1987 Constitution ordains that no arrest, search or seizure can be made without a valid warrant issued by a competent judicial authority. Thus -

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose, shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.<sup>[9]</sup>

It further mandates that any evidence obtained in violation thereof shall be inadmissible for any purpose in any proceeding.<sup>[10]</sup>

The right is not absolute and admits of certain well-recognized exceptions. For instance, a person lawfully arrested may be searched for dangerous weapons or anything which may be used as proof of the commission of the offense, without a search warrant.<sup>[11]</sup> The search may extend beyond the person of the one arrested to include the permissible area or surroundings within his immediate control.<sup>[12]</sup>

The issue is whether this case falls within the exception.

The accused was admittedly *outside* unit 22 and in the act of delivering to Mabel Cheung Mei Po a bag of *shabu* when he was arrested by the NARCOM operatives. Moreover, it is borne by the records that Unit 122 was not even his residence but that of his girlfriend Nimfa Ortiz, and that he was merely a *sojourner* therein. Hence, it can hardly be said that the inner portion of the house constituted a permissible area within his reach or immediate control,<sup>[13]</sup> to justify a warrantless search therein. Spedjo

The lawful arrest being the sole justification for the validity of the warrantless search under the exception, the same must be limited to and circumscribed by the subject, time and place of the arrest. As to subject, the warrantless search is sanctioned only with respect to the person of the suspect, and things that may be seized from him are limited to "dangerous weapons" or "anything which may be used as proof of the commission of the offense." With respect to the time and place of the warrantless search, it must be contemporaneous with the lawful arrest. Stated otherwise, to be valid, the search must have been conducted at about the time of the arrest or immediately thereafter and only at the place where the suspect was arrested,<sup>[14]</sup> or *the premises or surroundings under his immediate control*.

It must be stressed that the purposes of the exception are only to protect the arresting officer against physical harm from the person being arrested who might be armed with a concealed weapon, and also to prevent the person arrested from destroying the evidence within his reach.<sup>[15]</sup> The exception therefore should not be

strained beyond what is needed in order to serve its purposes, as what the Solicitor General would want us to do.

We therefore hold that the search in Unit 122 and the seizure therein of some 5,578.68 grams of *shabu* do not fall within the exception, hence, were illegal for being violative of one's basic constitutional right and guarantee against unreasonable searches and seizures.

As a consequence of the illegal search, the things seized on the occasion thereof are inadmissible in evidence under the exclusionary rule. They are regarded as having been obtained from a polluted source, the "fruit of a poisonous tree." However, objects and properties the possession of which is prohibited by law cannot be returned to their owners notwithstanding the illegality of their seizure. Thus, the *shabu* seized by the NARCOM operatives which cannot legally be possessed by the accused under the law, can and must be retained by the government to be disposed of in accordance with law.

Be that as it may, the inadmissibility of the 5,578.68 grams of *shabu* in evidence does not totally exonerate the accused. The illegal search in Unit 122 was preceded by a valid arrest. The accused was caught *in flagrante delicto* as a result of an entrapment conducted by NARCOM operatives on the basis of the information provided by Mabel Cheung Mei Po regarding the accused's illegal trade. NARCOM agents P/Insp. Santiago and SPO3 Campanilla saw him handing over a bag of white crystalline substance to Mabel Cheung Mei Po. His arrest was lawful and the seized bag of *shabu* weighing 999.43 grams was admissible in evidence, being the fruit of the crime. Miso

The second assigned error hinges on the credibility of witnesses. As we have consistently stressed in the majority of appeals in criminal cases, appellate courts give weight, and at times even finality, to the findings of the trial judge who is in a better position to determine the credibility of witnesses, as he can observe firsthand their demeanor and deportment while testifying. Appellate courts have none of the judge's advantageous position; they rely merely on the cold records of the case and on the judge's discretion.

As mentioned earlier, Mabel Cheung Mei Po turned hostile witness in the course of the trial. The defense capitalized on such fact and hammered the prosecution on this point, arguing that Mabel's testimony during her cross-examination virtually belied the prosecution's factual theory of the case and cast doubt on the testimony of the NARCOM agents.

But we are not persuaded. Mabel Cheung Mei Po turned hostile witness understandably because of her adverse interest in the case. She was separately charged for violation of Sec. 15, Art. III, RA 6425,<sup>[16]</sup> although she was subsequently acquitted by the trial court on reasonable doubt.<sup>[17]</sup> It is therefore to be expected that she would be extremely cautious in giving her testimony as it might incriminate her. At any rate, the testimony of the police informant in an illegal drug case is not essential for the conviction of the accused since that testimony would merely be corroborative and cumulative.<sup>[18]</sup> Hence, even if we concede that Mabel Cheung Mei Po's testimony was discredited on account of the dismissal of the criminal case against her, the prosecution could still rely on the testimonies of the