

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. WINIFRED DAVID @ “BUTCH”, ACCUSED-APPELLANT.

G.R. No. 105667. August 16, 1994

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

In our decision promulgated on 1 March 1994, we affirmed in toto the decision of Branch 57 of the Regional Trial Court of Angeles City in Criminal Case No. 12502 which found the accused-appellant guilty beyond reasonable doubt of the violation of Section 4, Article II of R.A. No. 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended, and sentenced him to suffer the penalty of life imprisonment and to pay a fine of P20, 000.00.

On 29 March 1994, the accused-appellant filed a Motion for Reconsideration and/or New Trial wherein he alleges that the trial court failed to give evidentiary value to the fact that he is an "unwashed and unlettered" wood carver who was merely induced by the NARCOM agents to commit the crime, and as ground for a new trial, he insists on the alleged newly discovered evidence which he already extensively discussed in the Appellant's Brief.

In its Manifestation on the Motion filed on 7 July 1994, the Office of the Solicitor General reiterates its position in the Brief for the Appellee that the prosecution overwhelmingly established the guilt of the appellant for the crime charged and that he should not be allowed to change his theory or raise new issues on appeal; however, it interposes no objection to the motion for new trial "in the interest of substantial justice."

Notwithstanding the softening of the heart of the Office of the Solicitor General, this Court cannot grant the motion for new trial.

The alleged newly discovered evidence refers to the "inducement" theory and consists of the information conveyed to counsel by the wife of the appellant that the latter had confessed to her that he was merely instructed and induced to go to a certain person to buy marijuana, which he did. According to counsel, this evidence could not have been offered during the trial because the wife disclosed it only after the promulgation. In the challenged decision, we exposed the utter lack of merit of this claim. In the first place, the alleged newly discovered evidence would change the theory of the appellant from a mere denial with an affirmative claim of planting of evidence to inducement. In the second place, the requisites of a new trial are not present. Finally, the testimony sought to be offered would be hearsay.

Since the motion then offers nothing new, its denial is inevitable.

However, the penalty imposed on the accused should be modified in view of the new amendments introduced by R.A. No. 7659[1] to Section 4, Article II, and Section 20, Article IV of R.A. No 6425, as amended. R.A. No. 7659 was approved on 13 December 1993 and took effect on 31 December 1993. As thus further amended, the penalty prescribed in Section 4 was changed from "life imprisonment to death and a fine ranging from twenty thousand to thirty thousand pesos" to "reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million pesos." However, pursuant to Section 17 of R.A. No. 7659, which amends Section 20 of R.A. No. 6425,

the new penalty shall be applied if the quantity of the dangerous drugs involved falls within the first paragraph of the amended Section 20, and if the quantity would be lower than those specified in said first paragraph, the penalty shall be from "prision correccional to reclusion perpetua." The pertinent portion of the amended Section 20 reads as follows:

"SEC. 20. Application of Penalties, Confiscation and Forfeiture of the Proceeds or Instrument of the Crime. -- The penalties for offenses under Section 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:

x x x

5. 750 grams or more of indian hemp or marijuana;

x x x

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

The penalty then in Section 4 is now based on the quantity of the prohibited drugs involved, except where the victim is a minor or where the prohibited drug involved in any offense under Section 4 is the proximate cause of the death of the victim, in which case the maximum penalty prescribed in Section 4 shall be imposed regardless of the quantity of the prohibited drugs involved.[2]

In *People vs. Martin Simon y Sunga*, [3] decided on 29 July 1994, this Court ruled as follows:

(1) Provisions of R.A. No. 7659 which are favorable to the accused shall be given retroactive effect pursuant to Article 22 of the Revised Penal Code.

(2) Where the quantity of the dangerous drug involved is less than the quantities stated in the first paragraph of Section 20 of R.A. No. 6425, the penalty to be imposed shall range from prision correccional to reclusion temporal, and not reclusion perpetua. The reason is that there is an overlapping error, probably through oversight in the drafting, in the provisions on the penalty of reclusion perpetua as shown by its dual imposition, i.e., as the minimum of the penalty where the quantity of the dangerous drugs involved is more than those specified in the first paragraph of the amended Section 20 and also as the maximum of the penalty where the quantity of the dangerous drugs involved is less than those so specified in the first paragraph.

(3) Considering that the aforesaid penalty of prision correccional to reclusion temporal shall depend upon the quantity of the dangerous drugs involved, each of the component penalties thereof -- prision correccional, prision mayor, and reclusion temporal -- shall be considered as a principal imposable penalty depending on the quantity, such that the quantity of the drugs enumerated in the second paragraph should then be divided into three, with the resulting quotient, and double or treble the same, as the bases for determining the appropriate component penalty.

(4) The modifying circumstances in the Revised Penal Code may be appreciated to determine the proper period of the corresponding imposable penalty or even to effect its reduction by one or more degrees; provided, however, that in no case should such graduation of penalties reduce the imposable penalty lower than prision correccional.

(5) In appropriate instances, the Indeterminate Sentence Law shall be applied and considering that R.A. No. 7659 has unqualifiedly adopted the penalties under the Revised Penal Code with their technical signification and effects, then the crimes under the Dangerous Drugs Act shall now be considered as crimes punished by the Revised Penal Code; hence, pursuant to Section 1 of the Indeterminate Sentence Law, the indeterminate penalty which may be imposed shall be one whose maximum shall be within the range of the imposable penalty and whose minimum shall be within the range of the penalty next lower in degree to the imposable

penalty.

With the foregoing as our touchstones and taking into account the quantity of marijuana involved in this case, the second paragraph of Section 20 of R.A. No. 6425, as further amended by Section 17 of R.A. No. 7659, is applicable and the proper imposable penalty would be prision correccional.

Applying the Indeterminate Sentence Law, the accused may then be sentenced to suffer an indeterminate penalty ranging from six (6) months of arresto mayor as minimum to six (6) years of prision correccional as maximum. We should then set aside the dispositive portion of our decision of 1 March 1994 and enter a new one.

WHEREFORE, the challenged decision of Branch 57 of the Regional Trial Court of Angeles City in Criminal Case No. 12502 is hereby AFFIRMED, subject to the modification of the penalty. Accused WINIFRED DAVID @ "BUTCH" is hereby sentenced to suffer an indeterminate penalty ranging from Six (6) months of arresto mayor as minimum to Six (6) years of prision correccional as maximum.

Costs against the accused-appellant.

SO ORDERED.

Bellosillo, Quiason, and Kapunan, JJ., concur.

Cruz, J., (Chairman), on official leave.

[1] "An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Code, as Amended, Other Special Laws, and for Other Purposes."

[2] Section 4, second paragraph, as amended by R.A. No. 7659. See also Section 5, second and third paragraphs; Section 15, second paragraph; and Section 15-a, second and third paragraphs, as amended by R.A. No. 7659.

[3] G.R. No. 93028.

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