

**ANTONIO DANA O Y ROXAS, PETITIONER, VS. COURT OF APPEALS
AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.***G.R. No. 115504. April 06, 1995*

Ponente: REGALADO, J.

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In its decision promulgated on December 10, 1993 in CA--G.R. No. 12913,[1] respondent court affirmed in toto the judgment in Criminal Case No. 6443 of the Regional Trial Court, Branch 46, Masbate, Masbate which found petitioner guilty of a violation of Section 15, Article III of Republic Act No. 6425, as amended, for having in his possession, custody and control one (1) deck of methamphetamine hydrochloride, otherwise known as "shabu," and imposing on him the penalty of imprisonment from six (6) years and one (1) day, as minimum, to twelve (12) years, as maximum, and to pay a fine of six thousand pesos (P6,000.00).

Desirous of a second appellate review and insisting on his innocence, petitioner came to this Court on a petition documented findings in the judgment of respondent court as explained and ramified in the adverse comment of the Solicitor General, the aforesaid petition was denied in our resolution of January 25, 1995.[2]

The Public Attorney's Office of the Department of Justice, which represents petitioner in this appellate proceeding, attempted to file a reply to the aforementioned comment of the Solicitor General but due to a technical error in the intended submission, as well as the nature of the textual contents thereof, the Court resolved to treat said reply as a motion for reconsideration and to deny the same with finality in its resolution dated March 1, 1995.[3]

Petitioner is once again before us, this time on a motion for partial reconsideration, his counsel prefacing the same with the statement that he "will no longer contest the affirmance of the findings of fact of the Court of Appeals," but praying this Court to "reduce the penalty imposed on the petitioner pursuant to the ruling in *People vs. Martin Simon*, G.R. No. 93028, July 29, 1994, wherein it was stated that the 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." [4]

Counsel elucidates on the fact that the prohibited drug of "shabu" involved in this case, which was not specified in the information filed in the trial court, or dwelt upon with desirable specificity in the decision of respondent court, or, for that matter in the previous pleadings filed in this case, actually consists of only 0.06 gram. Commendably, counsel submitted together with his aborted reply a certified duplicate-original copy of the transcript of the stenographic notes taken at the trial of this case on December 12, 1991,[5] on pages 4 to 5 whereof the aforesaid fact on the weight or volume of the drug involved is testified to and attested by Forensic Chemist Lorlie M. Arroyo of the Philippine National Police Crime Laboratory Service at Camp Simeon Oala, Legaspi City.

Petitioner accordingly invokes our holding in *Simon*, as well as some of our rulings subsequent thereto applying the guidelines in the former and involving quantities of prohibited drugs of comparative applicability,[6] in support of his plea for a modification of the identical judgments of the two lower courts. In consideration of the factual clarification now brought to our attention and pursuant to our doctrinal pronouncements in similar cases,

we shall overlook the procedural lapse in this appeal, and grant the reconsideration sought by petitioner.

WHEREFORE, the judgment of respondent court on appeal before us is hereby AFFIRMED, but with the MODIFICATION that the fine of six thousand pesos (P6,000.00) is deleted and, there being no mitigating or aggravating circumstances, accused-appellant Antonio Danao y Roxas shall suffer an indeterminate sentence of imprisonment ranging from six (6) months of arresto mayor, as minimum, to four (4) years and two (2) months of prision correctional, as maximum.

SO ORDERED.

Narvasa, C.J., (Chairman), Bidin, Puno, and Mendoza, JJ., concur.

[1] Justice Jorge S. Imperial, ponente, with Justices Pacita Cañizares-Nye and Eduardo G. Montenegro, concurring.

[2] Rollo, 89.

[3] Ibid., 131.

[4] Ibid., 134.

[5] Ibid., 114-129.

[6] People vs. Vivar (G.R. No. 110260, August 11, 1994, 235 SCRA 257) involved "shabu" weighing 0.0723 gram; People vs. Constantino, (G.R. No. 109119, August 16, 1994, 235 SCRA 384), 0.01 gram; People vs. Tranca (G.R. No. 110357, August 17, 1994, 235 SCRA 455), 1.10 grams.

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