

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROBERTO PIASIDAD ALIAS OBET, ALIAS BOBOT, ACCUSED-APPELLANT.*G.R. No. 119290. October 04, 1996*

Ponente: MELO, J.

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Accused-appellant Roberto Piasidad, unsatisfied with the decision dated June 24, 1992 of the Regional Trial Court of the Seventh Judicial Region (Branch 10, Cebu City) finding him guilty beyond reasonable doubt of violating Section 15, Article II of Republic Act No. 6425, as amended, otherwise known as the Dangerous Drug Act of 1972, in relation to Section 21 thereof, involving two decks of shabu, weighing 0.20 gram in the aggregate, and sentencing him to suffer life imprisonment and to pay a fine of P20,000.00, seasonably interposed the present appeal.

A notice to file the appellant's brief was sent to Atty. Erwin E. Estandarte, accused-appellant's counsel of record, on November 9, 1995, but per registry return card, said counsel has moved out from his given address without giving a forwarding address.

We are now in receipt from a certain Atty. Egbert S. Capalla, on behalf of accused-appellant, of an Omnibus manifestation and Motion to Submit appeal for Early Resolution arguing that given the minimal quantity of the prohibited drug involved in the instant appeal, i.e., 0.20 gram of shabu, accused-appellant is entitled to the lesser penalty provided for under the second paragraph of Republic Act No. 7659, pursuant to Article 22 of the Revised Penal Code; that applying the ruling of the court in *People vs. Simon* (G.R. 93028, July 29, 1994) to the case at bar, the imposable penalty should be the indeterminate sentence of six (6) months of arresto mayor, as the minimum, to six (6) years of prision correctional or even lesser at the discretion of the Court, as the maximum; and, that considering that as of the date of the filing of the pleading, accused-appellant had a total of three (3) years, and seven (7) months of imprisonment to his credit from the promulgation of the appealed decision, not to mention his preventive detention during trial, he has served more than the given penalty.

The court, due to the failure of accused-appellant's counsel to file the required brief within the reglementary period, now resolves to dismiss the instant appeal pursuant to Section 8, Rule 124 of the New Rules on Criminal Procedure.

However, the Court finds its ruling in *People vs. Simon* (supra) to the effect that the penalty imposable depends upon the quantity of the prohibited drugs involved, applicable to the present case being favorable to accused-appellant. Thus, the contentions of Atty. Capalla are well taken.

Under the provisions of Section 20, Republic Act No. 6425, as amended by Republic Act No. 7659, which took effect on December 31, 1995, and as interpreted by the Court in *People vs. Simon* (supra), if the quantity of the methylamphetamine hydrochloride or shabu is less than 200 grams, the penalty imposable, in the event of conviction, should be affirmed, shall be within the range of prision correctional (from six (6) months and one (1) day to six (6) years).

The present case, involving the sale of less than one gram of methamphetamine, hydrochloride or shabu, is on all fours with the cases of *People v. Manalo* (245 SCRA 493 [1995]) which involved less than one (1) gram, and *Danao vs. CA* (243 SCRA 494 [1995]) which likewise involved less than one gram (.06) of the prohibited drug, wherein the Court applied *People vs. Simon* by reducing the penalty of the accused-appellant from life imprisonment to an indeterminate sentence of six (6) months of arresto mayor as minimum, to two (2) years and four (4) months of prision correctional, as maximum.

IN VIEW WHEREOF, the appeal is hereby DISMISSED. The Director of the Bureau of Corrections is directed to verify the allegation that accused-appellant has been imprisoned for more than three (3) years, and seven (7) months, and if the same is found to be true and correct, the Director of the Bureau of Corrections is hereby ordered to immediately release accused-appellant, unless he is being detained or held for some other lawful cause or charge.

SO ORDERED.

Narvasa, C.J., (Chairman), Davide, Jr., Francisco, and Panganiban, JJ., concur.

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