

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. DEXTER TORRES Y DELA CRUZ, APPELLANT.

G.R. NO. 170837. September 12, 2006

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Dexter Torres was charged with violation of Section 8, Article II of Republic Act (R.A.) No. 6425, as amended, for unlawful possession of 831.91 grams of marijuana fruiting tops, a prohibited drug; as well as Section 16, Article III of the same law for illegal possession of 0.26 grams of methamphetamine hydrochloride, a regulated drug commonly known as shabu.

The indictment in Criminal Case No. 08-1334 for violation of Section 8, Article II of R.A. No. 6425 reads:

That on or about August 13, 2001, in the Municipality of Gonzaga, province of Cagayan, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in his possession and under his control and custody one (1) brick of Marijuana fruiting tops weighing 831.91 grams wrapped in a newspaper which gave POSITIVE results for the tests of marijuana, a prohibited drug, the said accused knowing fully well and aware that it is prohibited for any person to, unless authorized by law, to possess or use any prohibited drug.

CONTRARY TO LAW.[1]

Upon the other hand, the accusatory portion of the Information in Criminal Case No. 08-1344 for violation of Section 16, Article III of the same law reads:

That on or about August 13, 2001, in the Municipality of Gonzaga, province of Cagayan, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in his possession and under his control and custody two (2) small heat-sealed transparent plastic sachets containing white crystalline substances with a total weight of 0.26 gm. which substances gave POSITIVE results to the tests for Methamphetamine Hydrochloride, a regulated drug, commonly known as Shabu, the said accused knowing fully well and aware that it is prohibited for any person to possess or use any regulated drug without the corresponding license or prescription.

CONTRARY TO LAW.[2]

The two (2) criminal cases were jointly tried at the Regional Trial Court (RTC) of Aparri, Cagayan, Branch 8. Dexter pleaded not guilty to both charges.[3]

The case for the prosecution is as follows:

In the early afternoon of August 13, 2001, operatives of the Second Regional Narcotics Office led by PSI Teodolfo M. Tannagan, SPO4 Abelardo M. Lasam, SPO1 Jessie O. Liwag and PO2 Tirso T. Pascual, as members, and a back-up team from the Gonzaga Police Station, armed with a search warrant issued by Executive Judge Jimmy Henry F. Lucson, Jr. of the RTC of Tuguegarao City, Cagayan, raided the house of Dexter Torres located

at Salvanera St., Barangay Paradise, Gonzaga, Cagayan. The team was joined by the two barangay councilmen, Edward Sagnep and Ernesto Vivit.

Just before searching Dexter's house, SPO4 Lasam presented the search warrant and introduced the raiding team to Henny Gatchalian, Dexter's sister, and Dexter's children. When asked where the owners of the house were, Henny responded that her brother and his wife had just left. In their presence and that of the two kagawads, the team searched the master's bedroom and found the following stashed inside the second deck of a wooden cabinet: 1) a brick of dried suspected marijuana wrapped inside newsprint; 2) two plastic sachets of suspected shabu; 3) three pieces of aluminum foil; 4) a colored green plastic lighter; and 5) a small transparent plastic bag. The raiders then prepared an inventory^[4] of the articles seized, a copy of which was handed to Henny. After photos of the confiscated articles were taken, they were placed in a plastic bag and turned over to SPO4 Lasam, who submitted the same to the Regional Crime Laboratory Office 2, Camp Alimanao, Tuguegarao, Cagayan, for forensic examination.^[5] That same afternoon, Kagawads Edward and Ernesto both signed a certification^[6] as to the conduct of the search, certifying, among others, that it was conducted in an orderly and peaceful manner; no unnecessary force was employed; nobody was hurt; and nothing was taken without proper receipt. Henny, however, refused to sign the certification.

PSI Forensic Chemist Maria Leonora C. Camarao examined the substance seized from Dexter's house which tested positive for marijuana and shabu. On the witness stand, Maria confirmed her Physical Science Reports, hereunder reproduced as follows:

SPECIMEN SUBMITTED:

Exh "A" - one (1) brick of suspected Marijuana fruiting tops with weight of 831.91 grams wrapped with newspaper print and masking tape with markings and further placed in one (1) brown long envelope with description. xxx

Exh "B-B1" - Two (2) small heat-sealed transparent plastic sachets wrapped with masking tape with markings, containing white crystalline substances with total weight of 0.26 gm and further placed in one (1) cellophane with description. xxx

PURPOSE OF LABORATORY EXAMINATION:

To determine the presence of prohibited and/or regulated drugs. xxx

FINDINGS:

Qualitative examination conducted on the above-stated specimen gave the following results:

Exh "A" - gave POSITIVE result to the test for Marijuana, a prohibited drug. xxx

Exh "B-B1" - gave POSITIVE result to the test for Methamphetamine Hydrochloride, a regulated drug. xxx

CONCLUSION:

Exh "A" - contains Marijuana, a prohibited drug. xxx

Exh "B-B1" - contains Methamphetamine Hydrochloride, a regulated drug. xxx^[7]

On December 5, 2002, the prosecution formally offered its exhibits, which included the brick of marijuana leaves and fruiting tops weighing 831.91 grams (Exhibit "A"); and the shabu which weighed 0.26 grams (Exhibits "B" and "B-1"). Thereafter, the prosecution rested its case.^[8]

Dexter, through counsel, objected to the offer of evidence on the ground that the same were "confiscated not from

[his] possession as he was then staying in Laoag City."[9]

The defense consists of the testimonies of Dexter himself, his sister Henny Gatchalian, and his relative, Kagawad Ernesto, are predicated on denial and frame-up.

The defense version is as follows:

Thirty-eight-year old Dexter eked out a living as a carpenter. He averred that weeks before his house was searched, he was already in Gabu, Laoag City, working in a house construction project of his sister-in-law Rema Pentigrado. He left for Gabu, Laoag City on July 28, 2001 with his wife. After entrusting his children to the care of his father, and his sister Henny, he padlocked his place and gave the key to his sister. He declared that he only came to know of the incident from Henny when he and his wife arrived home from Gabu, Laoag City.[10]

Kagawad Ernesto, aged 65 years, Dexter's kin, narrated that on August 13, 2001 he was at his house. A policeman from the Gonzaga Police Station arrived and asked him to be a witness in a raid that lawmen would conduct in Dexter's residence. He acceded. However, upon reaching the premises, he found out that the search had already been conducted. He was informed that a brick of marijuana had been found inside the house, but he did not see it. Later, upon the prodding of the police, he signed a confiscation receipt without reading its contents.[11]

Henny, aged 35 years, recounted that at about 1:00 p.m. of August 13, 2001, she was at her father's house when a number of policemen arrived. They asked her to open the door, and as she was forced to do so, she accompanied the police to the neighboring house and unlocked the place. Inside, she was placed in one of the rooms and was ordered not to move a muscle. Thereafter, the policemen ransacked the cabinets, chests and drawers. Meanwhile, she remained confined in the room, without a clue as to what was taking place. After the search, the policemen brought her out of the house and showed to her the shabu and marijuana which the police claimed to have found inside the house. She denied signing anything save the search warrant. Henny, however, told the court that it was Dexter's mistress, not his wife, that her brother brought to Gabu, Laoag City.[12]

On November 14, 2003, the RTC rendered a joint decision convicting Dexter of the offenses charged. The fallo reads -

WHEREFORE, the Court finds accused Dexter Torres y De La Cruz "GUILTY" beyond reasonable doubt in both cases and is hereby sentenced to suffer the penalty of Reclusion Perpetua and a fine of Five Hundred Thousand (P500,000.00) Pesos in Criminal Case No. 08-1334 and, the indeterminate prison term of six (6) years, one (1) day of prison mayor, as minimum, to twelve (12) years and one (1) day of reclusion temporal, as maximum, and a fine of Five Hundred Thousand (P500,000.00) Pesos in Criminal Case No. 08-1344.

With costs.

SO ORDERED.[13]

The trial court rejected the defense of alibi cum frame-up of the accused and upheld in favor of the prosecution the presumption of regularity in the performance of official duties.

Dexter appealed his conviction to this Court, docketed as G.R. Nos. 162542-43, praying for the reversal of the judgment. He claimed that the search warrant had been unlawfully implemented and that the prosecution failed to prove his guilt beyond reasonable doubt. He assigned the following errors purportedly committed by the trial court:

I

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE SEARCH WARRANT ISSUED AGAINST HEREIN APPELLANT WAS VALIDLY AND LAWFULLY IMPLEMENTED..

II

THE COURT A QUO ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.[14]

The appeal was transferred to the CA for appropriate action and disposition per Resolution[15] of this Court dated April 6, 2005, in accordance with the ruling in *People v. Mateo*. [16]

On July 28, 2005, the judgment of conviction was affirmed, but was modified as to the penalty imposed in Criminal Case No. 08-1344. In disposing the appeal, the CA gave short shrift to Dexter's claim that the two-witness rule under Sec. 8, Rule 126 of the Revised Rules of Court was violated. Emphatically pointing out that at the time of the search, Henny was living in Dexter's house, and therefore a lawful occupant, it held that the two-witness rule applies only in the absence of a lawful occupant of the searched premises. Citing *People v. Simon*, [17] and considering that only 0.26 grams of shabu was involved, the appellate court reduced Dexter's sentence to an indeterminate penalty of six (6) months of *arresto mayor* to four (4) years and two (2) months of *prison correccional*. The petitory portion of the CA decision reads -

WHEREFORE, in view of the foregoing, the joint decision of the Regional Trial Court, Branch 08 of Aparri, Cagayan in Criminal Cases Nos. 08-1334 and 08-1344 is hereby AFFIRMED WITH MODIFICATIONS. Accused-appellant Dexter Torres y Dela Cruz is hereby found GUILTY of violating Sections 8 and 16 of Republic Act No. 6425, as amended by Republic Act No. 7659, and is hereby sentenced to suffer:

(1) the penalty of *reclusion perpetua* and a fine of Five Hundred Thousand Pesos (P500,000.00) in Criminal Case No. 08-1334; and

(2) an indeterminate sentence of 6 months of *arresto mayor* to 4 years and 2 months of *prison correccional* in Criminal Case 08-1344.

SO ORDERED.[18]

Dexter sought reconsideration, which the CA denied.[19]

Unfazed, Dexter, now the appellant, appealed anew to this Court, adopting by way of manifestation the same arguments before the CA.[20]

Appellant insists that the items seized from his house are inadmissible as evidence, being the fruits of an illegal search. He maintains that the manner of search conducted in his residence had failed to comply with the mandatory provisions of Section 8 (formerly Section 7), Rule 126 of the 2000 Rules of Criminal Procedure, which provides:

SEC. 8. Search of house, room, or premises, to be made in presence of two witnesses. ' No search of a house, room, or any other premise shall be made except in the presence of the lawful occupant thereof or any member of his family or in the absence of the latter, two witnesses of sufficient age and discretion residing in the same locality.

Appellant argues that Henny is not a "lawful occupant" of the house as contemplated in the above section. And even if she is one, her presence did not cure the illegality of the search since she was prevented by the police from actually witnessing the search as it was being conducted. He points out that her sister was confined by the police in one of the rooms of the house while the simultaneous search was going on in the other portion thereof. Moreover, though the raiding party had summoned two *barangay kagawads* as witnesses, the police were already through searching the house when *Kagawad Ernesto* arrived. In other words, the latter, too, had failed to witness the search.[21]

The appeal is not meritorious.

Contrary to appellant's claim, Henny and Barangay Kagawad Ernesto were present when the lawmen searched his house. The illicit drugs and paraphernalia were found in the master's bedroom stashed inside the second deck of a wooden cabinet. This is clear from the positive and categorical testimony of PO2 Tirso Pascual, a member of the raiding team:

FISCAL :

Q. What did you do when you arrived at the house of the accused at Salvanera St. Paradise, Gonzaga, Cagayan?

A. SPO4 Lasam, the officer on the case who was handling the Search Warrant, informed the persons present at that house of the purpose of the members, Sir.

Q. By the way, was the accused present?

A. Dexter Torres was not present, Sir.

Q. Who were in their house at that time?

A. His sister, Henny Gatchalian and some of his children, Sir.

x x x

Q. And after informing the sister of the accused of your purpose, that is to serve the search warrant against her brother, what did you do?

A. In the presence of the barangay kagawad and the sister of the accused, we began to search the house, Sir.

Q. And were you able to discover anything inside the house of the accused?

A. Yes, Sir.

Q. What were you able to find out inside the house?

A. During the conduct of the search, we were able to recover one brick form of dried marijuana wrapped in a newspaper, placed inside a wooden cabinet particularly at the second deck of the wooden cabinet, Sir.

Q. Aside from that, what did you see inside the house?

A. While conducting the search, we recovered two transparent plastic sachet containing, which we believe to be shabu and some other materials such as lighter, aluminum foils, Sir.[22]

x x x

COURT:

Q. Where was Henny Gatchalian at the time of the search?

A. Always beside us, Your Honor.

Q. You mean Henny Gatchalian was also inside the house?

A. Yes, Your Honor.

FISCAL:

Q. So there were five of you inside the house?

A. Yes, Sir.

Q. You, Liwag, councilmen Sagnep and Vivit and Gatchalian?

A. Yes, Sir.[23]

PO2 Pascual's above testimony was corroborated by SPO1 Jessie Liwag, likewise a member of the raiding team that searched the house of the appellant.[24] Besides, Henny and Kagawad Ernesto, were not the only witnesses to the search; Kagawad Edward Sagnep was also present during the entire search. This is evinced by the testimonies of PO2 Pascual and the certification signed by the two Kagawads.

The RTC and the CA correctly rejected the testimonies of defense witnesses Henny and Kagawad Ernesto for being biased and riddled with inconsistencies. We are in full accord with the following encompassing disquisition of the appellate court:

We note, however, that her credibility is adversely affected by the inconsistencies in her statements. She could not even exactly say where she was staying before the police arrived to conduct the search. Thus, the transcript of her testimony provides as follows:

FISCAL NELJOE CORTES: You do not own a house in Gonzaga?

Witness GATCHALIAN: We only stay in the house of my parents-in-law, Sir.

Q: You stated while ago that you were then in your house when they conducted the search?

A: Yes, Sir.

Q: And you likewise stated that your house is situated beside the house of Dexter Torres

A: Yes, Sir.

Q: The house of your father is situated about 200 meters away from the house of Dexter Torres, is it not?

A: Yes, Sir.

Q: And according to you at that time, you were staying in the house of your father-in-law?

A: I was not staying in the house of my father, Sir.

Q: Because you were then staying in the house of Dexter Torres?

A: Yes, Sir.

Q: And as a matter of fact, you were in the house of Dexter Torres when the police arrived, is it not?

A: I was in the house of my father, Sir.

Q: So you now agree with me that in August 2001, you were staying in the house of your brother Dexter Torres?

A: No, Sir.

Q: Did you not state a while ago that you are staying in your brother's house?

A: Yes, Sir, but when the police conducted the search, I was in the house of my father.

Q: Again, you seem not to be telling the truth?

A: Why not, Sir.

Q: A while ago also you stated that you are staying in the house of your father-in-law, which is about 200 meters away?

A: Yes, Sir.

Q: So at that time you were staying in three houses, in the house of your brother, in the house of your father-in-law and in the house of your (father)?

A: I am not staying in the house my father-in-law, Sir.

Q: So your statement earlier that you are staying in your father-in-law's house is not correct?

A: No, Sir.

Q: So the house that you are referring to in your direct examination is actually the house of your father or the house of Dexter?

A: (I) was only told by Dexter that I will just clean the house if he leaves the place, Sir.

Consistent with the trial court's own findings as between the testimony of Gatchalian and the testimonies of the police officers, this Court finds the testimonies of the police officers more credible. Aside from the principle that testimonies of police officers deserve full faith and credit given the presumption that they have performed their duties regularly, we note that the prosecution witnesses gave consistent and straightforward narrations of what transpired on August 13, 2001. The police officers have consistently testified that Gatchalian was then in the house of the accused-appellant when they arrived thereat, and that she was with them when they conducted the search inside the house.

The presence of barangay council members Edward Sagnep and Ernesto Vivit during the search was also sufficiently established. These barangay officials even affixed their signatures on the confiscation receipt issued by PO3 Jessie Liwag that contains a statement that the seized properties were found in the presence of Brgy. Kag. Edward R. Sagnep and Brgy. Kag. Ernesto Q. Vivit.

Barangay kagawad Ernesto Vivit's retraction and assertion that he was not really present when the policemen searched the house of the accused-appellant fail to persuade. During cross-examination, Vivit, a relative of the accused-appellant, even testified in court:

FISCAL NELJOE CORTES: You were required to sign a confiscation receipt?

A: Yes, sir.

Q: You were told that the document that you were asked to sign is a Confiscation Receipt, meaning, the items you enumerated therein were actually taken as a result of the search?

A: Yes, sir.

Q: And you signed that document because you know for a fact that the items were actually recovered inside the house of the accused?

A: Yes, sir.

Q: And that is the truth?

A: Yes, sir.

As correctly pointed out by the trial court:

The afore statements of this defense witness clearly established the fact that, there was nothing irregular in the execution of the search warrant. It also establishes the material fact that, what was claimed to have been recovered, seized and confiscated from the cabinet located in one of the rooms of Dexter's house, to wit: dried marijuana, two (2) plastic sachets of shabu, lighter, match box, and aluminum foils are true. True, because Ernesto Vivit, a witness to the search and a barangay councilman signed the confiscation receipt voluntarily because he knew for a fact that said items were actually recovered from the house of the accused."

Even defense witness Henny Gatchalian mentioned in her testimony that Ernesto Vivit was with the policemen when they conducted the search.[25]

More importantly, it is now too late in the day for appellant to object to the admissibility of the evidence seized pursuant to the search warrant. Though he seasonably objected after the prosecution formally offered its evidence, his objection was not based on constitutional grounds, but rather on the ground that he was not in actual possession of the premises at the time the search was conducted.[26]

In the case of *Demaisip v. Court of Appeals*,[27] we held:

At any rate, objections to the legality of the search warrant and to the admissibility of the evidence obtained thereby were deemed waived when no objection to the legality of the search warrant was raised during the trial of the case nor to the admissibility of the evidence obtained through said warrant.

Indeed, the right to be secure from unreasonable searches and seizures, like any other right, can be waived and the waiver may be made either expressly or impliedly.[28]

Hard to believe is appellant's insinuation that the evidence for the prosecution were planted. His very conduct following his arrest would belie this allegation:

First. He failed to complain about this matter when he was apprehended nor bestirred himself to bring it up during his preliminary investigation. He could not even identify the person, the policeman or policemen who allegedly planted the evidence. In fact, it was only during this appeal that appellant accentuated this alleged frame-up.

Second. The appellant failed to inform his counsel of the alleged planting of evidence by the policemen; if he had done so, for sure, the said counsel would have prepared his affidavit and filed the appropriate motion in court for the suppression of the things/articles seized by the policemen.

Third. We find it incredible that the policemen planted said evidence in full view of Kagawad Edward, whose presence during the search was undisputed. This is so because the policemen could be prosecuted for planting evidence and, if convicted, sentenced to death under Section 19 of R.A. No. 7659:

SECTION 19. Section 24 of Republic Act No. 6425, as amended, known as the Dangerous Drugs Act of 1972, is hereby amended to read as follows:

Sec. 24. Penalties for Government Officials and Employees and Officers and Members of Police Agencies and the Armed Forces, "Planting" of Evidence. - The maximum penalties provided for [in] Sections 3, 4(1), 5(1), 6, 7, 8, 9, 11, 12 and 13 of Article II and Sections 14, 14-A, 15(1), 16 and 19 of Article III shall be imposed, if those found guilty of any of the said offenses are government officials, employees or officers, including members of police agencies and the armed forces.

Any such above government official, employee or officer who is found guilty of "planting" any dangerous drugs punished in Sections 3, 4, 7, 8, 9 and 13 of Article II and Sections 14, 14-A, 15 and 16 of Article III of this Act in the person or in the immediate vicinity of another as evidence to implicate the latter, shall suffer the same penalty as therein provided.

The incantation of frame-up is nothing new. It is a common and standard line of defense in most prosecutions for

violation of the Dangerous Drugs Law. While such defense cannot and should not always be considered as contrived, nonetheless, it is generally rejected for it can easily be concocted but is difficult to prove. Police officers are, after all, presumed to have acted regularly in the performance of their official functions, in the absence of clear and convincing proof to the contrary, or that they are motivated by ill-will.[29]

Appellant next submits that his absence during the search coupled with the fact that he was not caught in possession of the illicit drugs and paraphernalia are circumstances sufficient enough to exonerate him.[30]

We are not persuaded.

The essential elements of the crime of illegal possession of regulated drugs are the following: (a) the accused is found in possession of a regulated drug; (b) the person is not authorized by law or by duly constituted authorities; and (c) the accused has knowledge that the said drug is a regulated drug.[31]

The elements of illegal possession of prohibited drugs are as follows: (a) the accused is in possession of an item or object which is identified to be a prohibited drug; (b) such possession is not authorized by law; and (c) the accused freely or consciously possessed the prohibited drug.[32]

The fact that appellant was not in his residence when it was searched nor caught in flagrante delicto possessing the illicit drugs and paraphernalia does not dent the case of the prosecution. As a matter of law, when prohibited and regulated drugs are found in a house or other building belonging to and occupied by a particular person, the presumption arises that such person is in possession of such drugs in violation of law, and the fact of finding the same is sufficient to convict. Otherwise stated, the finding of the illicit drugs and paraphernalia in the house owned by the appellant raised the presumption of knowledge and, standing alone, was sufficient to convict.[33]

This Court, in *People v. Tira*,[34] ruminated on the juridical concept of "possession" under Section 16, Article III of R.A. No. 6425, as amended, and the evidence necessary to prove the said crime. The same principle applies to prohibited drugs.

x x x This crime is *mala prohibita*, and as such, criminal intent is not an essential element. However, the prosecution must prove that the accused had the intent to possess (*animus possidendi*) the drugs. Possession, under the law, includes not only actual possession, but also constructive possession. Actual possession exists when the drug is in the immediate physical possession or control of the accused. On the other hand, constructive possession exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found. Exclusive possession or control is not necessary. The accused cannot avoid conviction if his right to exercise control and dominion over the place where the contraband is located, is shared with another.

Thus, conviction need not be predicated upon exclusive possession, and a showing of non-exclusive possession would not exonerate the accused. Such fact of possession may be proved by direct or circumstantial evidence and any reasonable inference drawn therefrom. However, the prosecution must prove that the accused had knowledge of the existence and presence of the drug in the place under his control and dominion and the character of the drug. Since knowledge by the accused of the existence and character of the drugs in the place where he exercises dominion and control is an internal act, the same may be presumed from the fact that the dangerous drugs is in the house or place over which the accused has control or dominion, or within such premises in the absence of any satisfactory explanation.

In the instant case, appellant failed to present any evidence to rebut the existence of *animus possidendi* over the illicit drugs and paraphernalia found in his residence. His claim that he was not aware that such illegal items were in his house is insufficient. We have time and again ruled that mere denial cannot prevail over the positive testimony of a witness. Mere denial, just like *alibi*, is a self-serving negative evidence which cannot be accorded

greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters. As between a categorical testimony that rings of truth on one hand, and a bare denial on the other, the former is generally held to prevail.[35] Moreover, his defense of frame-up, as we said, is a common and standard line of defense which is invariably viewed with disfavor, it being capable of easy concoction and difficult to prove.[36] Considering that no clear and convincing evidence was presented to prove such allegation, the presumption of regularity in the performance of official duty,[37] as well as the principle that findings of the trial court on the credibility of witnesses, especially when affirmed by the CA, are entitled to great respect and are accorded the highest consideration,[38] must prevail over the appellant's imputation of ill-motive on the part of the policemen who conducted the search.

The RTC and the CA, in Criminal Case No. 08-1334, correctly meted against appellant the penalty of reclusion perpetua and the P500,000.00 fine. The crime of violation of Section 8, Article II of R.A. No. 6425, as amended, for illegal possession of 831.91 grams of marijuana, a prohibited drug, is punishable by reclusion perpetua to death. Considering that there are no qualifying circumstances, the appellant is sentenced to suffer the penalty of reclusion perpetua, conformably to Article 63 of the Revised Penal Code.

The Court, however, will modify the penalty the CA imposed upon the appellant in Criminal Case No. 08-1344.

Under Section 16, Article III of R.A. No. 6425, as amended, the impossible penalty of possession of less than 200 grams of regulated drug, in this case shabu, is prision correccional to reclusion perpetua. Based on the quantity of the regulated drug subject of the offense, the impossible penalty shall be as follows:

QUANTITY IMPOSABLE PENALTY

Less than one (1) gram to 49.25 grams prision correccional

49.26 grams to 98.50 grams prision mayor

98.51 grams to 147.75 grams reclusion temporal

147.76 grams to 199 grams reclusion perpetua

Considering that the regulated drug found in the possession of the appellant is only 0.26 grams, the impossible penalty for the crime is prision correccional. Applying the Indeterminate Sentence Law, the appellant should have been sentenced to suffer an indeterminate penalty of from four (4) months and one (1) day of arresto mayor in its medium period, as minimum, to three (3) years of prision correccional in its medium period, as maximum, for violation of Section 16 of R.A. No. 6425, as amended.

In view of the quantity of shabu confiscated in this case, the CA correctly deleted the penalty of fine imposed on appellant, as the second paragraph of Section 20 of R.A. No. 6425, as amended by Section 17 of R.A. No. 7659, provides only for the penalty of imprisonment.

Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, increased the penalty for illegal possession of less than five (5) grams of shabu to imprisonment of twelve (12) years and one (1) day to twenty years and a fine ranging from three hundred thousand (P300,000.00) to four hundred thousand pesos (P400,000.00). However, since this law is not favorable to appellant, it cannot be given retroactive application in the instant case. This is the mandate of Article 22 of the Revised Penal Code, which reads:

ART. 22. Retroactive effect of penal laws. - Penal laws shall have a retroactive effect insofar as they favor the persons guilty of felony, who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the

convict is serving the same.

The same law also changed the penalty for illegal possession of 500 grams or more of marijuana to life imprisonment to death, and a fine ranging from P500,000.00 to P10,000,000.00. Obviously, the amendment of the penalty from reclusion perpetua to life imprisonment to death in R.A. No. 9165 cannot, likewise, be applied retroactively to the present case since it would also be unfavorable to appellant.

IN LIGHT OF ALL THE FOREGOING, the Decision appealed from is AFFIRMED with MODIFICATION. Accordingly, judgment is hereby rendered as follows:

(1) In Criminal Case No. 08-1334, the appellant is found GUILTY beyond reasonable doubt of violation of Section 8, Article II of Republic Act No. 6425, as amended, and is hereby SENTENCED to suffer the penalty of reclusion perpetua. He is also ORDERED to pay a fine of P500,000.00 without subsidiary imprisonment in case of insolvency;

(2) In Criminal Case No. 08-1344, the appellant is hereby found GUILTY beyond reasonable doubt of violation of Section 16, Article III of Republic Act No. 6425, as amended, and is SENTENCED to suffer an indeterminate penalty from Four (4) months and One (1) day of arresto mayor, in its medium period, as minimum to Three (3) years of prision correccional, in its medium period, as maximum. No costs.

SO ORDERED.

Panganiban, C. J., (Chairperson), Ynares-Santiago, Austria-Martinez, and Chico-Nazario, JJ., concur.

[1] Records, Vol. 1, p. 2.

[2] Records, Vol. 2, p. 1.

[3] Records, Vol. 1, pp. 27-28; records, Vol. 2, pp. 22-23.

[4] Records, Vol. 1, p. 8.

[5] TSN, May 14, 2002, pp. 3-12; TSN, September 10, 2002, pp. 2-22; Joint Affidavit of Arrest, Records, Vol. 1, p. 6.

[6] Records, Vol. 1, p. 10.

[7] Id. at 13.

[8] Id. at 107-110.

[9] Id. at 114.

[10] TSN, March 11, 2003, pp. 2-7.

[11] TSN, May 26, 2003, pp. 4-11.

[12] TSN, July 7, 2003, pp. 3-14.

[13] Records, Vol. 1, p. 193.

[14] CA rollo, p. 48.

[15] Id. at 94.

- [16] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.
- [17] G.R. No. 93028, July 29, 1994, 234 SCRA 555, 582.
- [18] CA rollo, p. 114.
- [19] Id. at 129-130.
- [20] Rollo, p. 18.
- [21] CA rollo, pp. 52-56.
- [22] TSN, May 14, 2002, p. 6-8.
- [23] TSN, September 10, 2002, p. 21.
- [24] TSN, October 14, 2003, pp. 2-6.
- [25] CA rollo, pp. 107-110.
- [26] Records, Vol. 1, pp. 114-115.
- [27] G.R. No. 89393, January 25, 1991, 193 SCRA 373, 382.
- [28] People v. Omaweng, G.R. No. 99050, September 2, 1992, 213 SCRA 462, 471, citing People v. Malasugui, 63 Phil. 221, 226 (1936).
- [29] People v. Huang Zhen Hua, G.R. No. 139301, September 29, 2004, 439 SCRA 350, 381.
- [30] CA rollo, p. 56.
- [31] People v. Tira, G.R. No. 139615, May 28, 2004, 430 SCRA 134, 151.
- [32] Id.
- [33] Cupcupin v. People, 440 Phil. 712, 730 (2002).
- [34] Supra note 31, 151-152.
- [35] People v. Macalaba, 443 Phil. 565, 578 (2003).
- [36] People v. Solon, G.R. No. 106639, May 31, 1995, 244 SCRA 554, 560.
- [37] Rule 131, Sec. 3 (m), Revised Rules of Court.
- [38] Garcia v. CA, 324 Phil. 846, 853 (1996).<

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