

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELLY NAELGA, ACCUSED-APPELLANT.

G.R. No. 171018. September 11, 2009

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

For Review under Rule 45 of the Revised Rules of Court is the Decision[1] dated 30 November 2005 of the Court of Appeals in CA-G.R. CR No. 00304 entitled *People of the Philippines v. Elly Naelga*, affirming the Decision[2] rendered by the Regional Trial Court (RTC) of Rosales, Pangasinan, Branch 53, in Criminal Case No. 4649-R, finding Elly Naelga guilty of the illegal sale of methamphetamine hydrochloride, more popularly known as shabu.

By virtue of a Criminal Complaint, accused-appellant Elly Naelga y Bongay (accused-appellant) was indicted before the RTC of Rosales, Pangasinan, Branch 53, for violation of Sections 5[3] and 11(3),[4] Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, the accusatory portion of which reads:

That on or about 3:00 o'clock in the afternoon of July 15, 2003, in Poblacion, Municipality of Rosales, Province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in his possession, control and custody the following, to wit: one (1) piece of small transparent plastic containing "Shabu" weighing more or less 0.4 grams which he sold to a poseur-buyer designated by the police, and without having the necessary permit or license to possess the same.

Contrary to Article II, Sec. 5 and Sec. 11(3) of R.A. 9165.[5]

Upon arraignment on 27 August 2003, accused-appellant pleaded not guilty.[6]

A pre-trial conference was held on 16 September 2003 in the presence of the government prosecutor, the accused and his counsel. Based on the pre-trial order issued by the trial court on 16 September 2003, the defense only admitted to the identity of the accused-appellant and the fact of his apprehension, but denied any knowledge of the existence of a buy-bust operation. The defense limited its testimonial evidence to that of accused-appellant himself. On the other hand, the prosecution limited its testimonial evidence to the stipulations of Police Officer (PO) 2 Noe Sembran, PO1 Rosauro Valdez, and Forensic Chemist Emelda Besarra Roderos. The prosecution's documentary evidence included the following: (a) Affidavit executed by PO2 Sembran who acted as poseur-buyer; (b) the marked money/P100 bill with Serial No. GW877766 recovered from accused-appellant; (c) confiscation receipt; (d) Chemistry Report; and (e) sachet of shabu handed by accused-appellant to PO2 Sembran. Thereafter, trial on the merits ensued.

The prosecution supported its version of the events through documentary evidence and the testimonies of its two witnesses from the Rosales Police Station in Rosales, Pangasinan, namely: PO2 Noe Sembran and PO1 Rosauro Valdez.

PO2 Noe Sembran testified that upon receiving information from a civilian asset that the accused Elly Naelga was peddling illegal drugs at the public market of Rosales, Pangasinan, Police Chief Inspector Policarpio Cayabyab, Jr. hatched a plan to conduct a buy-bust operation to apprehend the accused. PO2 Sembran was tasked to act as poseur-buyer, with PO1 Danilo Asis, Senior Police Officer (SPO) 1 Jesus Caspillo, and PO1 Rosauro Valdez as backup operatives. The money used for the buy-bust operation was provided by the Rosales Treasurer's Office and affixed thereto were his signature and that of the municipal treasurer of Rosales.

In his testimony, PO2 Sembran narrated that on 15 July 2003, he was informed by an asset that accused-appellant Elly Naelga was selling illegal drugs at the Rosales Public Market in Pangasinan. Thereafter, at about three o'clock in the afternoon of the same day, PO2 Sembran went inside the public market and approached accused-appellant. PO2 Sembran was familiar with accused-appellant, because the police's confidential agent had been monitoring accused-appellant's activities for several weeks. PO2 Sembran talked to accused-appellant, who asked the former if he was a security guard, to which he replied in the affirmative. While engaged in this conversation, PO2 Sembran asked the accused-appellant what he could use to keep him awake while on duty as a security guard. Accused-appellant suggested that he drink Red Bull. PO2 Sembran replied that he already did, but this did not work, and that he was caught sleeping on his post. Accused-appellant then declared that he knew something more effective, as he passed his index finger under his nose as if sniffing something. When asked what he meant, accused-appellant told PO2 Sembran that he was referring to bato or shabu. PO2 Sembran said he was willing to try this and to buy Five Hundred Pesos (P500.00) worth of shabu. Accused-appellant told PO2 Sembran to give him the money and committed to return with the shabu. PO2 Sembran gave appellant four One Hundred Pesos (P400.00) in marked bills. Upon receiving the money, accused-appellant left. PO2 Sembran went back to the police station to plan the arrest of accused-appellant.

Police Chief Inspector Policarpio C. Cayabyab, Jr. instructed PO2 Sembran to act as a poseur-buyer and the other members of the team as backup. PO2 Sembran and his fellow police officers returned to the public market almost an hour later. They waited for accused-appellant until he finally arrived, alighting from a tricycle. PO2 Sembran followed him in an alley. There were people sleeping on bamboo tables in the alley, and PO2 Sembran expressed apprehension at being noticed. Accused-appellant reassured him that they would not be disturbed and immediately asked for the balance of One Hundred Pesos (P100.00). PO2 Sembran gave accused-appellant the marked money. Thereupon, accused-appellant took out a sachet containing white granules and handed it to PO2 Sembran, who then revealed that he was a policeman. Accused-appellant tried to run, but PO2 Sembran held on to the former's belt. They struggled and fell to the pavement. PO1 Valdez came to help PO2 Sembran arrest accused-appellant. PO2 Sembran was able to recover the One-Hundred-Peso (P100.00) bill from accused-appellant, who had used the Four Hundred Pesos (P400.00) he earlier received to buy shabu. Accused-appellant was taken into custody, and PO2 Sembran executed an affidavit of arrest. The plastic sachet containing 0.04 gram of white crystalline substance purchased from accused-appellant for P500.00 was marked "EN" and taken to the Philippine National Police (PNP) Regional Crime Laboratory Office in Camp Florendo, San Fernando, La Union, for laboratory examination.[7] The four marked One-Hundred-Peso bills earlier given to accused-appellant were no longer with him, but the last P100.00 marked bill later paid to him was recovered.

PO1 Rosauro Valdez corroborated PO2 Sembran's testimony, narrating how he acted as backup in connection with the buy-bust operation that led to the arrest of accused-appellant.

The parties agreed to dispense with the testimony of the Chemist, Police Inspector Emelda Besarra Roderos, who conducted the laboratory examination of the subject drug, considering that the defense admitted the existence, authenticity and due execution of Chemistry Report Number D-260-2003-U dated 16 July 2003, showing that the laboratory examination of the drug confiscated from accused-appellant yielded a positive result for

methamphetamine hydrochloride or shabu, a dangerous drug. [8]

For the defense, accused-appellant took the witness stand.

Accused-appellant denied the accusations against him. He testified that he was employed by a Muslim named Khadi to sell compact discs (CDs) in a stall located inside the public market of Rosales, Pangasinan. PO2 Sembran, who introduced himself as a security guard, had previously been buying CDs from him. One Saturday, the exact date of which he could not recall, PO2 Sembran came at around 8:30 in the morning and bought a battery worth P5.00. On Tuesday of the following week or on 15 July 2003, PO2 Sembran returned and asked accused-appellant to buy shabu for him saying, "We need that this evening." He told PO2 Sembran that he did not know anybody selling shabu; nonetheless, PO2 Sembran left P400.00, which was placed beside him. He took the money, because it might get lost. At around 3:00 o'clock in the afternoon of the same day, PO2 Sembran came back to the stall and waited for him. When he arrived, he gave to PO2 Sembran what he bought. Accused-appellant admitted, although not certain, that what he bought was shabu, which he gave to PO2 Sembran. After accused-appellant handed over the shabu and while he was leaving the place, PO2 Sembran called him back uttering, "Pare, come here," and then handcuffed him. PO2 Sembran told him, "Pare, I am a policeman" (pulis ako). On cross examination, accused-appellant admitted buying the subject shabu in Urdaneta City.

After hearing, the trial court rendered judgment on the merits. Finding that the prosecution had proven accused-appellant's guilt beyond reasonable doubt, the RTC promulgated its Decision on 21 June 2004 convicting him of the offense charged, sentencing him to Life Imprisonment, and imposing on him a fine of P500,000.00, disposing as follows:

WHEREFORE, the Court hereby finds the accused Elly Naelga guilty beyond reasonable doubt of the crime of illegal sale of Methamphetamine Hydrochloride or "shabu" as charged, defined and penalized under Article II, Section 5 of Republic Act (RA) No. 9165. Accordingly, he is sentenced to suffer life imprisonment; to pay a fine of Five Hundred Thousand Pesos (P500,000.00); and, to pay the costs of suit.[9]

Accused-appellant appealed the decision of the RTC to the Court of Appeals. On 30 November 2005, the Court of Appeals rendered a Decision affirming the challenged decision of the trial court, reasoning thus:

[T]here is no rigid or textbook method of conducting buy-bust operations. The choice of effective ways to apprehend drug dealers is within the ambit of the police authority - police officers have the expertise to determine which specific approaches are necessary to enforce their entrapment operations. The court's duty in these cases is to ensure that the rights of the accused have not been violated during buy-bust operations.

The failure of the police authorities to comply strictly with the Dangerous Drugs Board's Resolution on the chain of custody of the seized shabu and its preservation, by itself, is not fatal to the prosecution's case. What is essential or necessary is that after the subject shabu was seized, the same was duly identified, marked or preserved, and duly submitted to the crime laboratory for examination. x x x.

x x x x

x x x We always adhere to the well-entrenched doctrine in our jurisdiction that the findings of facts of the trial court, its calibration of the collective testimonies of the witnesses, its assessment of the probative weight of the evidence of the parties as well as its conclusions anchored on said findings are accorded by the appellate court high respect. In the absence of any showing that a judge's factual findings were reached arbitrarily or without sufficient basis, these findings are to be received with great respect by the Supreme Court, and indeed are binding upon it.

Prescinding therefrom, We hold that the court a quo had sufficiently and clearly established both the factual and legal basis that led to the verdict of conviction of accused-appellant Naelga. The Court a quo's findings and

pronouncement that the police officers who conducted the buy-bust operation against accused-appellant Naelga, did so pursuant to their lawful exercise of police functions should gain respect from Us. This is so because the defense miserably failed to produce any contrary evidence that would show even how remotely it was, that police officers Sembran and Valdez were motivated with grudge or ill-will to allow injustice to be committed against the person of accused-appellant if their accusation was fabricated.[10]

Via a Notice of Appeal,[11] accused-appellant elevated the case to this Court, which thereafter resolved to require the parties to simultaneously file their respective supplemental briefs, if they so desired, within 30 days from notice.[12] Both the prosecution and the defense opted to adopt their respective supplemental briefs filed before the Court of Appeals for purposes of expediency.[13]

In its brief, the defense raises the following issues for resolution by this Court:

I.

THE LOWER COURT GRAVELY ERRED IN GIVING CREDENCE TO THE INCONSISTENT AND INCREDIBLE TESTIMONIES OF THE PROSECUTION WITNESSES.

II.

THE LOWER COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED BASED ON THE DISPUTABLE PRESUMPTION THAT THE POLICE OFFICERS REGULARLY PERFORMED THEIR OFFICIAL FUNCTIONS.

We sustain accused-appellant's conviction.

Accused-appellant denies the charges against him and attacks the credibility of the prosecution witnesses.

The core issue for resolution is the issue of the credibility of the witnesses.

Accused-appellant questions the trial court's reliance on the credibility of the two prosecution witnesses in convicting him on several grounds. First, material inconsistencies and gross contradictions in the testimonies of the police officers destroyed their credibility. Second, accused-appellant alleges that the police officers failed to observe the proper guidelines in securing the chain of custody of the prohibited drugs; this alleged failure to follow proper procedure raises doubts as to whether the specimen examined by the forensic chemist and presented in court was indeed the one retrieved from accused-appellant. Thus, there can be no presumption of regularity.

On the other hand, the Office of the Solicitor General is for sustaining accused-appellant's conviction, arguing that the alleged inconsistencies are minor and inconsequential and, in fact, do not negate the occurrence of the buy-bust operation and accused-appellant's involvement.

The instant controversy involves no less than the liberty of accused-appellant. The presumption of innocence of an accused in a criminal case is a basic constitutional principle, fleshed out by procedural rules that place on the prosecution the burden of proving that the accused is guilty of the offense charged by proof beyond reasonable doubt. This being an appeal of a criminal case, opening the entire case up for review, we have carefully reviewed and evaluated the records and the decisions of the RTC and the Court of Appeals and find no reason to deviate from their rulings.

At the outset, it should be pointed out that prosecutions involving illegal drugs largely depend on the credibility of the police officers who conducted the buy-bust operation. Considering that this Court has access only to the cold and impersonal records of the proceedings, it generally relies upon the assessment of the trial court.[14] This Court will not interfere with the trial court's assessment of the credibility of witnesses except when there appears

on record some fact or circumstance of weight and influence which the trial court has overlooked, misapprehended, or misinterpreted.[15] This rule is consistent with the reality that the trial court is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial.[16] Thus, factual findings of the trial court, its calibration of the testimonies of the witnesses, and its conclusions anchored on its findings are accorded by the appellate court high respect, if not conclusive effect, more so when affirmed by the Court of Appeals, as in this case.

A successful prosecution for the illegal sale of dangerous/prohibited drugs must establish the following elements:

- (1) identities of the buyer and seller, the object, and the consideration; and
- (2) the delivery of the thing sold and the payment therefor.[17]

As correctly found by the trial court, accused-appellant was caught in a buy-bust operation. He was caught in flagrante delicto selling a dangerous drug, methamphetamine hydrochloride or shabu, to PO2 Noe Sembran on 15 July 2003 at the public market of Rosales, Pangasinan, established not only by the clear, straightforward, and convincing testimony of poseur-buyer PO2 Noe Sembran and corroborated by PO1 Rosauro Valdez, but also by accused-appellant's testimony.

Accused-appellant himself confirmed and admitted to the occurrence of said transaction. Following his testimony, he admitted to taking the P400.00 left by PO2 Sembran for the purchase of shabu, thereafter going to his alleged source in Urdaneta City, and then returning with the shabu to the Rosales Public Market, and handing the sachet over to PO2 Sembran. The foregoing were not only undisputed but were, in fact, admitted by accused-appellant himself in his testimony. Thus, there is no denying that the said transaction indeed took place.

Desperate to get himself absolved from culpability, accused-appellant submits in the alternative that the facts as presented by the prosecution reveal that the law enforcers, specifically PO2 Sembran, instigated him to sell shabu. Accused-appellant claims that it was PO2 Sembran who approached and asked him to buy shabu, leaving the money even if he said he did not know anybody selling shabu.

We find no instigation in this case. The general rule is that it is no defense to the perpetrator of a crime that facilities for its commission were purposely placed in his way, or that the criminal act was done upon the "decoy solicitation" of persons seeking to expose the criminal, or that detectives feigning complicity in the act were present and apparently assisting in its commission. This is particularly true in that class of cases where the offense is of a kind habitually committed, and the solicitation merely furnishes evidence of a course of conduct. Mere deception by the detective will not shield defendant, if the offense was committed by him free from the influence or the instigation of the detective.[18]

Here, the law enforcers received a report from their confidential informant that accused-appellant was engaged in illegal drug trade in the public market of Rosales. Poseur-buyer PO2 Sembran then pretended to be engaged in the drug trade himself and, with the help of his fellow buy-bust operatives, arrested accused-appellant in the act of delivering the shabu to him. In an entrapment, ways and means are resorted to for the purpose of trapping and capturing the lawbreakers in the execution of their criminal plan. In instigation, the instigator practically induces the would-be defendant into the commission of the offense, and himself becomes a co-principal. Entrapment is no bar to prosecution and conviction; in instigation, the defendant would have to be acquitted.

A buy-bust operation is a form of entrapment, which in recent years has been accepted as a valid and effective mode of arresting violators of the Dangerous Drugs Law. In a buy-bust operation, the idea of committing a crime originates from the offender, without anybody inducing or prodding him to commit the offense.[19] In the case at bar, the buy-bust operation was formed by the police officers precisely to test the veracity of the tip and in order

to apprehend the perpetrator.

While accused-appellant claims that it was PO2 Sembran who approached and asked him to buy shabu for him, the same cannot be considered as an act of instigation, but an act of "feigned solicitation." Instigation is resorted to for purposes of entrapment, based on the tip received from the police informant that accused-appellant was peddling illegal drugs in the public market of Rosales. In fact, it was accused-appellant who suggested to PO2 Sembran to use shabu; and, despite accused-appellant's statement that he did not know anybody selling shabu, he still took the money from PO2 Sembran and directly went to Urdaneta, where he claimed to have bought the illegal drug. Then he returned to the Rosales public market and gave the drug to PO2 Sembran.

The records of the case disclose that PO2 Noe Sembran, the designated poseur-buyer in the buy-bust operation, positively identified accused-appellant as the seller of the confiscated shabu. His testimony was corroborated by PO1 Rosauro Valdez. The object of the corpus delicti was duly established by the prosecution. The sachet confiscated from accused-appellant was positively identified, marked and preserved as evidence, and upon laboratory examination yielded positive for shabu.

Accused-appellant's assertion that the police operatives failed to comply with the proper procedure in the chain of custody of the seized drugs is premised on the idea that non-compliance with the procedure in Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165 creates an irregularity and overcomes the presumption of regularity accorded police authorities in the performance of their official duties.

The argument fails.

Contrary to appellant's claim, there is no broken chain in the custody of the seized items, later on determined to be shabu, from the moment of its seizure by the entrapment team, to its delivery to the investigating officer, to the time it was brought to the forensic chemist at the PNP Crime Laboratory for laboratory examination. It was duly established by documentary, testimonial, and object evidence, including the markings on the plastic sachet containing the shabu indicating that the substance tested by the forensic chemist, whose laboratory tests were well-documented, was the same as that taken from accused-appellant.

Failure of the buy-bust team to strictly comply with the provisions of said section did not prevent the presumption of regularity in the performance of duty from applying. [20]

The procedure for the custody and disposition of confiscated, seized and/or surrendered dangerous drugs, among others, is provided under Section 21(1), Article II of Republic Act No. 9165:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165, which implements said provision, reads:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; x x x Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary

value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

The above provision further states that non-compliance with the stipulated procedure, under justifiable grounds, shall not render void and invalid such seizures of and custody over said items, for as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers. The evident purpose of the procedure provided for is the preservation of the integrity and evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or the innocence of the accused. Its absence, by itself, is not fatal to the prosecution's case and will not discharge accused-appellant from his crime. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused. In the instant case, the integrity of the drugs seized remained intact, and the crystalline substance contained therein was later on determined to be positive for methamphetamine hydrochloride (shabu).

Before the enactment of Republic Act No. 9165, the requirements contained in Section 21(1) were already present, per Dangerous Drugs Board Regulation No. 3, Series of 1979. Despite such regulation and the non-compliance therewith by the buy-bust team, the Court still applied the presumption of regularity, holding:

The failure of the arresting police officers to comply with said DDB Regulation No. 3, Series of 1979 is a matter strictly between the Dangerous Drugs Board and the arresting officers and is totally irrelevant to the prosecution of the criminal case for the reason that the commission of the crime of illegal sale of a prohibited drug is considered consummated once the sale or transaction is established x x x and the prosecution thereof is not undermined by the failure of the arresting officers to comply with the regulations of the Dangerous Drugs Board. [21]

Assuming *arguendo* that the presumption of regularity in the performance of official duty will not apply due to the failure to comply with Section 21(a), the same will not automatically lead to the exoneration of the accused. Accused-appellant's conviction was based not solely on said presumption, but on the documentary and real evidence; and, more importantly, on the oral evidence of prosecution witnesses, whom we found to be credible. One witness is sufficient to prove the *corpus delicti* - that there was a consummated sale between the poseur-buyer and the accused - there being no quantum of proof as to the number of witnesses to prove the same. To emphasize, accused-appellant himself verified in his testimony that the said transaction took place.

The inconsistencies pointed out by the defense pertaining to whether or not he was already inside the public market of Rosales at the time the operatives returned, or if the buy-bust team saw him alighting from a tricycle, is an inconsistency immaterial to the commission of the offense and, thus, cannot affect the overall credibility of the prosecution witnesses.

The records of the case indicate that after his arrest, accused-appellant was taken into police custody. After the arrest, the seized item, which had the marking "EN" and alleged to contain shabu, was brought to the PNP crime laboratory for examination.[22] The request for laboratory examination and transfer of the confiscated sachet to the PNP crime laboratory was prepared by Chief of Police Policarpio C. Cayabyab, Jr.[23] The request indicated that the seized item was delivered by PO3 Resuello, Jr. and received by Forensic Chemist P/Insp. Emelda Besarra Roderos,[24] the same person who conducted laboratory tests on the substance. The transparent plastic sachet containing a white crystalline substance was later on determined to be positive for methylamphetamine hydrochloride or shabu.

PO2 Sembran positively identified the plastic sachet containing shabu, which he had bought from accused-appellant in the buy-bust operation. Thus, the identity of the shabu taken from accused-appellant had been duly preserved and established by the prosecution. Besides, the integrity of the evidence is presumed to be

preserved, unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with. The accused-appellant in this case bears the burden of making some showing that the evidence was tampered or meddled with to overcome the presumption of regularity in the handling of exhibits by public officers and the presumption that public officers properly discharged their duties. There is no doubt that the sachet marked "EN," which was submitted for laboratory examination and found to be positive for shabu, was the same one sold by accused-appellant to the poseur-buyer PO2 Sembran during the buy-bust operation.

Finally, accused-appellant's claim that he is a victim of a frame-up is viewed by this Court with disfavor, because being a victim can easily be feigned and fabricated. There being no proof of ill motive on the part of the police operatives to falsely accuse him of such a grave offense, the presumption of regularity in the performance of official duty and the findings of the trial court with respect to the credibility of witnesses shall prevail over the claim of the accused-appellant.[25] While the presumption of regularity in the performance of official duty by law enforcement agents should not by itself prevail over the presumption of innocence, for the claim of frame-up to prosper, the defense must be able to present clear and convincing evidence to overcome this presumption of regularity, which the defense was not able to proffer.

Accused-appellant was charged with the unauthorized sale and delivery of a dangerous drug in violation of the provisions of Section 5, Article II of Republic Act No. 9165.

Under Section 5, Article II of Republic Act No. 9165, the penalty of life imprisonment to death and a fine ranging from P500,000.00 to P1,000,000.00 shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved.

Thus, the trial court, as affirmed by the Court of Appeals, correctly imposed the penalty of life imprisonment and a fine of P500,000.00.

WHEREFORE, premises considered, the Decision of the Court of Appeals in CA-G.R. CR No. 00304 convicting accused-appellant ELLY NAELGA of violation of Section 5, Article II of Republic Act No. 9165, and sentencing him to suffer the penalty of life imprisonment and to pay a fine of P500,000.00 is hereby AFFIRMED.

SO ORDERED.

Ynares-Santiago, (Chairperson), Velasco, Jr., Peralta, and Abad[*], JJ., concur.

[*] Associate Justice Roberto A. Abad was designated to sit as additional member replacing Associate Justice Antonio Eduardo B. Nachura per Raffle dated 2 September 2009.

[1] Penned by Associate Justice Bienvenido L. Reyes with Associate Justices Godardo A. Jacinto and Arturo D. Brion (now a member of this Court), concurring; rollo, pp. 2-15.

[2] Penned by Judge Teodorico Alfonso P. Bauzon; records, pp. 49-57.

[3] Sec. 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

[4] SEC. 11. Possession of Dangerous Drugs. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x x

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

x x x x

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

[5] Records, p. 1.

[6] Id. at 15.

[7] Records, p. 40.

[8] Id. at 39.

[9] Id. at 57.

[10] Rollo, pp. 1-18.

[11] Pursuant to Section 13, Rule 124 of the Revised Rules on Criminal Procedure, as amended by A.M. No. 00-5-03-SC.

[12] Rollo, p. 16.

[13] Id. at 17-21.

[14] *People v. Sy*, 438 Phil. 383, 397 (2002).

[15] *People v. Corpuz*, 442 Phil. 405, 415 (2002).

[16] *People v. Julian-Fernandez*, 423 Phil. 895, 910 (2001).

[17] *People v. Novilinio*, G.R. No. 1770220, 24 April 2009.

[18] *People v. Lua Chu and Uy Se Tieng*, 56 Phil. 44, 53 (1931), quoting 16 *Corpus Juris*, p. 88, Sec. 57.

[19] *People v. Yumang*, G.R. No. 94977, 17 May 1993, 222 SCRA 119, 123; citing *People v. Ramos Jr.*, G.R. No. 88301, 28 October 1991, 203 SCRA 237, 242.

[20] *People v. Naquita*, G.R. No. 180511, 28 July 2008, 560 SCRA 430, 446; *People v. Concepcion*, G.R. No. 178876, 27 June 2008, 556 SCRA 421, 439; *People v. Del Monte*, G.R. No. 179940, 23 April 2008, 552 SCRA 627, 637.

[21] *People v. De los Reyes*, G.R. No. 106874, 21 January 1994, 229 SCRA 439, 447.

[22] *Records*, p. 11.

[23] *Id.* at 7.

[24] *Id.*

[25] *People v. Bongalon*, 425 Phil. 96, 116 (2002).

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