HERMINIO BUENAVENTURA Y RECTO, APPELLANT, VS. PEOPLE OF THE PHILIPPINES, APPELLEE.

G.R. NO. 171578. August 08, 2007

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Appellant, Herminio Buenaventura y Recto, was in two Informations charged before the Regional Trial Court (RTC) of Mandaluyong for violation of Republic Act No. 6425 (R.A. 6425), otherwise known as the Dangerous Drugs Act, docketed as Criminal Case Nos. MC02-5167-D-H and MC02-5168-D-H, for selling and possession, respectively.

The accusatory portion of the first Information reads:

> That on or about the 13[th] day of April 2002, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, without any lawful authority, did then and there willfully, unlawfully and feloniously sell, deliver or distribute to P/INSP. Roberto Palisoc, Jr. a poseur buyer, in the amount of P2,400.00 with serial nos. LR094904, TNT215767, D257728,Y57603, BL472852, YB026795, BG593266 and YC83780 one (1) brick of marijuana fruiting tops with 879, 488 grams, which were found positive to the test for marijuana, a prohibited drug, without the corresponding authority, license and prescription, in violation of the above-cited law.[1] (Underscoring supplied)

That of the second Information reads:

> That on or about the 13[th] day of April, 2002, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, not having been lawfully authorized to possess or otherwise use any prohibited drug, did then and there willfully, unlawfully and feloniously and knowingly have in his possession and under his custody and control nine (9) bricks of marijuana fruiting tops to wit:

1. 915.748 grams

6.897.190 grams

2. 771.174 grams

7.893.382 grams

3. 911.105 grams

8.846.262 grams

4. 914.801 grams

9.809.622 grams

5. 918.844 grams

> all in the total grams of 7,877.858 grams, which were found positive to the test for marijuana, a prohibited drug, without the corresponding authority, license and prescription, in violation of the above-cited law.[2] (Underscoring supplied)

From the evidence for the prosecution, the following facts were established:

Following their receipt of a report from an informant that a certain "Demet," who is a resident of Mandaluyong City, was selling marijuana in the Malate area, SPO2 Charlie Manzano (SPO2 Manzano) and PO1 Christopher Rivera (PO1 Rivera), upon the instruction of Police Inspector Roberto Palisoc (P/Insp. Palisoc), Chief of the Station Drug Enforcement Unit of the Malate Police, conducted on April 7, 2002 a surveillance in the Malate area to verify the report of the informant.

On April 11, 2002, SPO2 Manzano and PO1 Rivera reported to P/Insp. Palisoc that "Demet," whose real name is Herminio Buenaventura and a resident of 270 Daang Bakal St., Mandaluyong City, was indeed selling marijuana.

A buy-bust operation was thus scheduled on April 13, 2002. Two teams which were organized for the purpose prepared marked money in the total amount of P2,400 representing the cost of one brick of marijuana. The money consisted of four P500 bills and four P100 bills, each of which was marked with "RP" on the left portion thereof.

The teams proceeded to the Mandaluyong Police Station to coordinate with the local police, after which they repaired to their target location at Daang Bakal St.

P/Insp. Palisoc, together with the informant, went to the house at 270 Daang Bakal St. The other team members took strategic positions in the vicinity.

On seeing appellant in front of the house, P/Insp. Palisoc and the informant approached him. The informant then introduced appellant to P/Insp. Palisoc as the person interested to buy the "stuff."

On appellant's invitation, P/Insp. Palisoc and the informant went inside the house where appellant asked for the payment.

P/Insp. Palisoc thus gave the marked P2,400 to appellant who then took out one brick of marijuana from a black traveling bag which he gave to P/Insp. Palisoc, asking the latter to sniff it.

Convinced by its smell and texture that the brick was marijuana, P/Insp. Palisoc placed one hand inside his pocket and beeped his cellular phone which served as his pre-arranged signal to the other members of the teams.

P/Insp. Palisoc thereafter introduced himself as a police officer and arrested appellant. The other members of the teams repaired to appellant's house, introduced themselves as police officers, and searched the premises where they recovered the black traveling bag which contained nine (9) bricks of marijuana.

After apprising appellant of his constitutional rights, the policemen searched his person from whom they recovered the marked P2,400.

The marijuana bricks were subjected to laboratory examination by Forensic Chemist Judycel A. Macapagal, the result of which is reflected in her report as follows:

> SPECIMEN SUBMITTED:
>
> One (1) black travel[l]ing bag with markings "PS-9 HRB April 13, 2002" containing ten (10) bricks of suspected Marijuana fruiting tops with the following markings and recorded net weights:

A (HB-BB) - 879.488 grams

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F (HB 5) - 918.844 grams

B (HB 1) - 915.478 grams

G (HB 6) - 897.190 grams

C (HB 2) - 771.174 grams

H (HB 7) - 893.382 grams

D (HB 3) - 911.105 grams

I (HB 8) - 846.262 grams

E (HB 4) - 914.801 grams

J (HB 9) - 809.622 grams

TOTAL NET WEIGHT = 8,757.346 grams

> PURPOSE OF LABORATORY EXAMINATION:
>
> To determine the presence of prohibited or regulated drug. x x x
>
> FINDINGS:
>
> Qualitative examination conducted on the above-stated specimen gave POSITIVE results to the tests for Marijuana, a prohibited drug. x x x
>
> CONCLUSION:
>
> Specimen A through J contain Marijuana, a prohibited drug. x x x[3] (Underscoring supplied)

Upon the other hand, the defense proffered the following version:

On April 13, 2002, while one Rogelio delos Santos (Delos Santos) and barangay kagawad Edgar Ignacio (Ignacio) were conversing by the roadside of Daang Bakal St., they noticed a van and a sedan parked along the road. Two men alighted from the van and approached them, asking them if they know a Demet Buenaventura. Answering in the affirmative, Ignacio pointed to appellant who happened to be walking along the street on his way to the barangay hall. The two men from the van thereafter approached appellant and asked him if he was Demet Buenaventura to which he answered in the affirmative. Appellant was at once handcuffed and brought inside the van.

While inside the van, appellant asked the policemen inside why he was being arrested. One of them answered that someone pointed to him as an owner of marijuana, which appellant denied, he telling them that they could go to his house to prove that he had none. The policemen thus repaired to his house.

Upon reaching appellant's house, the policemen knocked at the door but nobody answered, prompting one of the policemen to kick the door open after which all of them went inside. Three of the policemen went upstairs, but after five to seven minutes, they went down empty-handed.

The policemen all left appellant's house and returned to the van. Soon after they went inside the van, two men arrived carrying a black bag which they placed on the front seat. One of the men in the van then pointed to appellant as the owner of the bag, which appellant denied.

Appellant was then blindfolded and his cellular phone, wallet and belt were taken from him. Afterwards, they all

went to Precinct 9 of WPD Manila where he was detained.

By Decision[4] of June 10, 2004, Branch 209 of the RTC of Mandaluyong City found appellant guilty of both charges, it holding that as between the straightforward and positive testimonies of the prosecution witnesses and the bare and negative testimony of appellant, the former indubitably deserve greater weight and credence.

Before the Court of Appeals to which appellant assailed the trial court's decision, he raised the following issues:

> - WHETHER OR NOT THE COURT A QUO ERRED IN CONVICTING ACCUSED-APPELLANT;
>
> - WHETHER OR NOT THE POLICE OFFICERS STATIONED IN MALATE HAS JURISDICTION TO ARREST ACCUSED APPELLANT IN MANDALUYONG WITHOUT WARRANT OF ARREST.
>
> - WHETHER OR NOT THE ARREST OF ACCUSED-APPELLANT CONDUCTED WITHOUT WARRANT OF ARREST IS VALID.[5] (Underscoring supplied)

By Decision[6] of November 22, 2005, the appellate court affirmed that of the trial court in this wise:

> A perusal of the records show that appellant failed to move for the quashal of the information filed against him. Instead, he submitted himself before the Court, assisted by counsel, entered a plea of not guilty, gave his testimony in open court and presented the testimonies of other witnesses to corroborate his version of what happened. Appellant cannot, therefore be permitted to raise such issue before this Court as there was a clear waiver of his objection to the validity of his arrest.
>
> The arrest made on appellant is valid notwithstanding the absence of a warrant of arrest. Appellant was apprehended pursuant to a legitimate buy-bust operation based on the information given by the informant to the Malate Police.
>
> x x x x
>
> Appellant was convicted of violating Section 4, RA 6425, as amended, for the sale of marijuana. Jurisprudence has firmly entrenched the following elements in the crime of illegal sale of prohibited drugs: (1) the accused (appellant) sold and delivered a prohibited drug to another, and (2) he knew that what he had sold and delivered was a dangerous drug. These essential elements have been established in the present case. Appellant sold and delivered the marijuana to P/Insp. Palisoc posing as buyer. It was seized and identified as a prohibited drug and subsequently presented as evidence. Appellant was aware that he was selling and delivering marijuana as he in fact asked P/Insp. Palisoc to sniff it upon handling the same.
>
> x x x x
>
> The witnesses for the prosecution are law enforcement officers who, unless shown that they were inspired by an improper motive or were not properly performing their duty, have in their favor the legal presumption that official duty has been regularly performed. x x x
>
> No ill motive in charging appellants of the offense, on the part of the police officers has been established. The accused (appellant) even testified that it was the first time that he met the police officers and he was unaware of any reason as to why these police officers who arrested him would fabricate charges against him. Likewise, appellant has not filed and has no intention of filing any criminal or administrative case against the police officers.
>
> x x x x
>
> Appellant was likewise charged of violation of Section 8 of RA 6425, as amended or illegal possession of prohibited drugs. In support of the charge, the prosecution presented as evidence the confiscated drugs obtained after the warrantless arrest of appellant.

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x x x x

Having caught appellant in flagrante delicto as a result of the buy bust operation, the police officers were not only authorized but were also under obligation to apprehend the drug pusher. Since the arrest is lawful, the search made incidental to the arrest is valid.[7] (Underscoring supplied)

Before this Court, appellant faults the appellate court in:

- . . . NOT CONSIDERING THE LEGAL ISSUE SHOWN UNDER SECTION 21, ARTICLE II OF R.A. NO. 9165, THAT IS, THE APPREHENDING POLICE OFFICERS DID NOT MAKE THE PHYSICAL INVENTORY AND PHOTOGRAPH THE SAME IN THE PRESENCE OF THE ACCUSED OR ANY 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 THE COPY THEREOF [sic];

- . . . AFFIRMING THE DECISION OF THE HONORABLE REGIONAL TRIAL COURT WHERE THE POLICE ARRESTED THE ACCUSED-PETITIONER OUTSIDE ITS TERRITORIAL JURISDICTION AND WITHOUT PROPER COORDINATION WITH PDEA DESPITE CLEAR EVIDENCE THAT THE ARRESTING OFFICERS ARRESTED THE PETITIONER OUTSIDE THEIR TERRITORIAL JURISDICTION WITHOUT PROPER COORDINATION WITH PDEA. [sic] HENCE, THE HONORABLE COURT OF APPEALS ACTED WITHOUT OR IN EXCESS OF JURISDICTION, OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION.

- . . . AFFIRMING THE DECISION OF THE HON. REGIONAL TRIAL COURT DESPITE THE FACT THAT THE ACCUSED-PETITIONER AT THE TIME OF ARREST WAS NOT INFORMED OF HIS CONSTITUTIONAL RIGHT. HENCE, THE HONORABLE COURT OF APPEALS ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION, OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION.

- . . . AFFIRMING THE DECISION OF THE HONORABLE REGIONAL TRIAL COURT DESPITE THE ARREST WAS WITHOUT WARRANT, SEARCH OR OTHERWISE NOT VALIDLY ISSUED WITH CLEAR EVIDENCE THAT THE PETITIONER WAS ILLEGALLY ARRESTED HAVING BEEN ARRESTED WITHOUT WARRANT. [sic] HENCE, THE HONORABLE COURT OF APPEALS ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION, OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION.

- . . . IN AFFIRMING THE DECISION OF THE HONORABLE REGIONAL TRIAL COURT DESPITE THE FACT THAT THE POLICE DID NOT COMPLY WITH THE PROVISION OF LAW, RA 6425 AS AMENDED WITH RA 9165 CLEAR EVIDENCE THAT THE ALLEGED ILLEGAL DRUGS ALLEGEDLY TAKEN FROM THE ACCUSED WAS PLANTED. [sic] HENCE, THE HONORABLE COURT OF APPEALS ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION, OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION.[8] (Underscoring supplied)

The pertinent provisions of the Dangerous Drugs Act-bases of appellant's indictment read:

Section 4. Sale, Administration, Delivery, Distribution and Transportation of Prohibited Drugs. - The penalty of reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person, who, unless authorized by law, shall sell, administer, deliver, give away to another, distribute, dispatch in transit or transport any prohibited drug or shall act as a broker in any such transactions. (Underscoring supplied)

Section 8. Possession or Use of Prohibited Drugs. - The penalty of reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless

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> authorized by law, shall possess or use any prohibited drug subject to the provision of Section 20 hereof. (As amended by R.A. 7659, December 13, 1993.) (Underscoring supplied)
>
> Section 20. Application of Penalties, Confiscation and Forfeiture of the Proceeds or Instruments of the Crime. - The penalties for offenses under Sections 3, 4, 7, 8, and 9 of Article II . . . shall be applied if the dangerous drugs involved is in any of the following quantities:
>
> x x x x
>
> 5. 750 grams or more of Indian hemp or marijuana;
>
> x x x x (Underscoring supplied)

With respect to illegal sale of marijuana, its essential elements are: (1) identity of the buyer and the seller, the object of the sale and the consideration; and (2) delivery of the thing sold and the payment.[9]

In the instant case, the elements of illegal sale were established with moral certainty by the prosecution. Considering the following testimony of P/Insp. Palisoc:

x x x x

> Q: How did you know that that person who was there in front of the house was the subject of your operation?
> A: The subject was pointed to me by the Informant. That when he pointed to me the subject personality that was the time that I was able to know or to identify the person.
>
> Q: So, when this person was pointed to you by the Informant how far were you at that time from him when he was pointed as the subject of your operation?
> A: Around ten (10) meters.
>
> Q: When you approached him what did you do?
> A: I was introduced to him by the Informant.
>
> Q: How were you introduced?
> A: I was introduced to him as the person who is interest to buy the staff [sic].
>
> Q: So, what did you do when you were introduced to that person?
> A: When I was introduced to him as the person who is interested to buy, we were invited to get inside the house.
>
> Q: Who invited you?
> A: The subject person.
>
> x x x x
>
> Q: Why were you invited inside the house?
>
> Atty. Arias: May I move also Your Honor that the witness is reading his notes while answering without asking permission from the Court.
>
> A: With due permission Your Honor, with the voluminous conduct of operation I can not remember all the things. This is not the only case. I have already attended the hearing in Manila with the same case, Your Honor.
>
> x x x x
>
> Court: Alright, the witness is allowed to refer to his notes to refresh his memory.

x x x x

Q: Why were you invited to get inside the house?

x x x x

A: Most probably he invited us to get inside is that he can not give us the staff [sic] in the open.

Atty. Arias: The answer is conjectural Your Honor.

Q: Why did he directly invited [sic] you inside his house?
A: For his illegal transaction.

Q: Why was there already a transaction that you entered into with that person?
A: Yes, I was introduced as the one who is interested to buy a prohibited drug which is marijuana.

x x x x

Q: While you were inside the house what did you do there?
A: I did nothing but he asked for the payment of marijuana.

x x x x

Q: My question, Your Honor, why is it he is asking money from you?
A: Because I was buying the marijuana.

Q: How much is the marijuana?
A: One (1) brick of marijuana is P2,400.00.

Q: So, what did you do when asked you to give the money to him.
A: I put out the money and I gave it to him.

Q: When you gave the money to him what did he do?
A: He get one brick of marijuana inside the traveling bag which is this one.

x x x x

Q: Where is that bag where he got one (1) brick of marijuana that you bought from him at that time?
A: I said it was inside the house the bag was near him.

Q: How far is it in relation to the place where you were then?
A: It was placed on top of a little table.

Q: How far is that from him, the bag?
A: From where he was sitting he can reach for it this far. When he opened it he gave it to me.

Q: When he gave that one (1) brick of marijuana to you what did you do?
A: He asked me to sniff it.

Q: And what did you do when you sniff it?
A: I not only sniff it but I opened the brick and I examined the contents.

Q: When you examined the contents of it what did you do?
A: When I examined the contents I could tell that it is marijuana because of the smell and the texture. I placed my hand inside my pocket and I beeped by cell phone which served as . . . the DILG Operatives.

Q: And then what happened?
A: Then I introduced myself as police officer and I placed him under arrest.[10] (Underscoring supplied)

The positive, candid, straightforward and detailed testimony of P/Insp. Palisoc, which was corroborated by the other members of the buy-bust teams, satisfactorily proves that a lawful buy-bust operation was conducted and that appellant is guilty of illegal sale of marijuana.

As to illegal possession of marijuana, Abuan v. People[11] enumerates its elements as follows:

> (a) the accused is in possession of the regulated drugs;
>
> (b) the accused is fully and consciously aware of being in possession of the regulated drug; and
>
> (c) the accused has no legal authority to possess the regulated drug.[12]

On the kind of possession and its evidentiary value, the same case of Abuan teaches:

> . . . Possession may be actual or constructive. In order to establish the constructive possession, the People must prove that petitioner had dominion or control on either the substance or the premises where found. The State must prove the adequate nexus between the accused and the prohibited substance. Possession of dangerous drugs constitutes prima facie evidence of knowledge or animus possidendi sufficient to convict an accused in the absence of any satisfactory explanation of such possession. The burden of evidence is shifted to petitioner to explain the absence of animus possidendi.[13] (Underscoring supplied)

The bricks of marijuana with a total weight of 7,877.858 grams were found in appellant's house over which he naturally had dominion and control. The bricks were recovered from the bag from where he had earlier taken the one which he sold to poseur-buyer P/Insp. Palisoc.

Appellant, nevertheless, assails the validity of his arrest and the search on his person and his house at the time of his arrest. Apropos is the following pronouncement in People v. Bagsit:[14]

> x x x It is long settled that where the accused, by his voluntary submission to the jurisdiction of the court, as shown by the counsel-assisted plea he entered during the arraignment and his active participation in the trial thereafter, voluntarily waives his constitutional protection against illegal arrests and searches. We have consistently ruled that any objection concerning the issuance or service of a warrant or a procedure in the acquisition by the court of jurisdiction over the person of the accused must be made before he enters his plea, otherwise, the objection is deemed waived.[15]

As correctly observed by the appellate court, appellant failed to move for the quashal of the informations filed against him. He instead submitted himself to the jurisdiction of the court. With the assistance of counsel, he entered a not guilty plea, and presented evidence in his defense. He thus clearly waived his objection to the validity of his arrest.

In any event, the warrantless arrest of appellant is justified under Rule 113, Section 5(a) of the Rules of Court[16] which reads:

> SEC. 5. Arrest without warrant; when lawful. - A peace officer or a private person may, without a warrant, arrest a person:
>
> (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense.

In another vein, appellant draws attention to the non-compliance by the apprehending police authorities with the following provision of R.A. 9165 or the Comprehensive Dangerous Drugs Act of 2002:

> Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. - The PDEA shall take charge and have custody of all dangerous drugs, plant sources

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> of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (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, (Underscoring supplied)

The buy-bust operation took place on April 13, 2002 before R.A. 9165 took effect on July 4, 2002. The above-quoted provision of R.A. 9165 does not thus apply to the case. Necessarily, since the Philippine Drug Enforcement Agency or PDEA was not yet established at the time, the provision calling for it to take charge and have custody of illegal drugs does not apply.

As for the arresting officers' conduct of the buy-bust operation outside their jurisdiction, the same may not be seriously questioned, they having coordinated with the Mandaluyong Police as shown by the Coordination Form[17] accomplished by the members of the Malate Police Station Drug Enforcement Unit.

Respecting appellant's claim that he was not informed of his constitutional rights at the time of his arrest, the same cannot prevail over P/Insp. Palisoc's following testimony:

> Q: So what did you do as the poseur-buyer and the person who arrested him appears in this case [?] [sic]
>
> A: I apprised him his rights.
>
> Q: What were the rights that you appraised him?
>
> A: I told him that "you have the right to remain silent. Whatever you say will be used against you . . . You have the right to counsel of your own choice."
>
> Q: After informing of his rights what else did you and your companions do?
>
> A: He was searched by my man, Manzano. And Manzano was able to recover and the utilized the buy bust money [sic].[18]

P/Insp. Palisoc's declaration was corroborated by the other members of the apprehending teams who, in their Joint Affidavit of Apprehension,[19] declared:

> That suspect HERMINIO BUENAVENTURA y RECTO was apprised of his Constitution Rights under the law which he understands and inform[ed of] the charges imputed against him but opted to remain silent. That subsequently he was brought to the WPD, Malate Police Station (PS9), Station Drug Enforcement Unit for investigation and proper disposition.[20]

On appellant's claim that the bricks of marijuana were planted, the Court is unconvinced. Frame-up is a defense that has been invariably viewed with disfavor, it being easily concocted and is a common standard defense ploy in most prosecutions for violation of the Dangerous Drugs Act.[21] Absent clear and convincing evidence of a frame-up, as in the present case, it must be rejected.[22]

Finally, given appellant's following testimony that he was not aware of any reason why the police officers would fabricate charges against him and had no intention of filing administrative charges against the arresting officers, viz:

> FISCAL TOBIAS: I am asking him if he is aware of any reason why these persons who apprehended him

should fabricate charges against him?

A : None, Sir.

FISCAL TOBIAS: You don't know of any reason. If indeed your allegation that you were not caught in possession of the drugs subject matter of the information as well as the allegation about the fact that you allegedly sold some marijuana to the poseur buyer in this case Police Inspector Roberto Palisoc, Jr. did you make any move to charge these persons about this fabrication that they made against you?

ATTY. ARIAS : Hypothetical, Your Honor.

A : No, Sir.

Q : You did not file any charges against these persons despite the gravity of the offense that they have fabricated against you?

A : No, Sir.

Q : Up to now?

A : Yes, Sir.

Q : Are you not intending to file any case against these persons who had deprived you of your liberty?

A : I don't have any intention to file a charge against them.,[23]

the presumption of regularity in the performance of official duty by the apprehending officers must remain.

On to the penalty to be imposed. The unauthorized sale of 750 grams or more of marijuana carries with it the penalty of reclusion perpetua to death and a fine ranging from Five Hundred Thousand Pesos (P500,000) to Ten Million Pesos (P10,000,000). The unauthorized possession of 750 grams or more of marijuana carries the same penalty.

The trial court imposed the penalty of reclusion perpetua for each of the offenses since neither mitigating nor aggravating circumstances attended their commission.[24] The appellate court affirmed the penalty imposed.

In light of the enactment of R.A. No. 9346[25] which prohibits the imposition of the death penalty, the Court finds it unnecessary to still discuss the presence or absence of mitigating or aggravating circumstances. The imposition of reclusion perpetua is thus in order as is the amount of fines.

WHEREFORE, the petition is DENIED.

Costs against appellant, Herminio Buenaventura y Recto.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Tinga, and Velasco, Jr., JJ., concur.

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[1] Records, p. 1.

[2] Id. at 14.

[3] Id. at 8.

[4] Id. at 630-641.

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[5] Court of Appeals (CA) rollo, p. 35.

[6] Id. at 120-130. Penned by Justice Juan Q. Enriquez, Jr., with the concurrence of Justices Conrado M. Vasquez, Jr. and Vicente Q. Roxas.

[7] Id. at 126-129.

[8] Rollo, pp. 11-12.

[9] People v. Razul, 441 Phil. 62, 75 (2002).

[10] Transcript of Stenographic Notes (TSN), July 3, 2002, pp. 28-36.

[11] G.R. No. 168773, October 27, 2006, 505 SCRA 799.

[12] Id. at 818.

[13] Ibid.

[14] G.R. No. 148877, August 19, 2003, 409 SCRA 350.

[15] Id. at 354 citing People v. Lopez, 315 Phil. 59, 71-72 (1995); People v. Cabiles, 348 Phil. 220, 232-233 (1998).

[16] People v. Bugatan, G.R. No. 172019, February 12, 2007; Teodosio v. Court of Appeals, G.R. No. 124346, June 8, 2004, 431 SCRA 194, 207.

[17] Exhibit "E," records, p. 75.

[18] TSN, July 3, 2002, p. 38.

[19] Exhibit "F," records, p. 76.

[20] Ibid.

[21] People v. Barita, 381 Phil. 832, 848 (2000).

[22] People v. Lacbanes, 336 Phil. 933, 940 (1997).

[23] TSN, April 10, 2003, pp. 6-8.

[24] Article 64 (2), REVISED PENAL CODE.

[25] AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES.

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