

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSEPH SERRANO AND ANTHONY SERRANO, ACCUSED-APPELLANTS.

G.R. No. 179038. May 06, 2010

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

Submitted for Our review is the Decision[1] dated December 29, 2006 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00494 which affirmed the decision of the Regional Trial Court (RTC) of Pasig City, Branch 70, in Criminal Case Nos. 12007-D and 12008-D. In Criminal Case No. 12007-D, both accused-appellants Joseph and Anthony Serrano were found guilty of the illegal sale of methamphetamine hydrochloride (shabu), a dangerous drug, in violation of Section 5, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, while in Criminal Case No. 12008-D, accused-appellant Anthony Serrano was found guilty of illegal possession of said drug in violation of Section 11, Article II of the same Act.

In Criminal Case No. 12007-D, the Information[2] dated January 22, 2003 charged accused-appellants Joseph and Anthony Serrano with violation of Section 5, Article II of Republic Act No. 9165[3] as follows:

Criminal Case No. 12007-D

On or about January 18, 2003, in Pasig City and within the jurisdiction of this Honorable Court, the accused, conspiring and confederating together and mutually helping and aiding one another, not being lawfully authorized by law, did, then and there willfully, unlawfully and feloniously sell, deliver and give away to PO1 Michael Familara, a police poseur-buyer, one (1) heat-sealed transparent plastic sachet containing five centigrams (0.05 gram) of white crystalline substance, which was found positive to the test for methylamphetamine hydrochloride (shabu), a dangerous drug, in violation of the said law. (Emphases ours.)

While in Criminal Case No. 12008-D, the Information[4] charged accused-appellant Anthony Serrano with violation of Section 11, Article II of Republic Act No. 9165,[5] committed as follows:

Criminal Case No. 12008-D

On or about January 18, 2003, in Pasig City and within the jurisdiction of this Honorable Court, the said accused, not being lawfully authorized to possess any dangerous drug, did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control four (4) heat-sealed transparent plastic sachets each containing the following:

- a) nineteen decigrams (0.19 gram)
- b) twenty decigrams (0.20 gram)
- c) twenty three decigrams (0.23 gram)
- d) fifteen decigrams (0.15 gram)

of white crystalline substance, which were found positive to the test for methylamphetamine hydrochloride (shabu), a dangerous drug, in violation of the said law. (Emphases ours.)

When arraigned, accused-appellants pleaded not guilty to the charges. After the pre-trial conference was terminated without any stipulations or admissions entered into by the parties, Criminal Case Nos. 12007-D and 12008-D were jointly tried.

The prosecution presented the following witnesses: the poseur-buyer, Police Officer (PO) 1 Michael Familara (PO1 Familara); the other members of the buy-bust operation team, namely, Senior Police Officer (SPO) 3 Leneal Matias (SPO3 Matias) and PO3 Carlo Luna (PO3 Luna); and the forensic chemist, P/Inspector Lourdeliza M. Gural (P/Insp. Gural). PO1 Familara, SPO3 Matias and PO3 Luna were all officers of the Pasig Police Station, Drug Enforcement Division, while P/Insp. Gural was a member of the Eastern Police District Crime Laboratory.

The object and documentary evidence for the prosecution included, among others: the five heat-sealed plastic sachets allegedly recovered from the accused-appellants at the time of the arrest; Chemistry Report No. D-120-03E,[6] confirming that the contents of the said plastic sachets were methylamphetamine hydrochloride or shabu; and the marked money used in the buy-bust operation.

The Court of Appeals summarized the prosecution's version of events as follows:

In the afternoon of January 18, 2003, Major Jerry Galvan received a telephone call from a concerned citizen about an illegal drug trade being conducted by a certain alias "Tune" in Barangay Bambang, Pasig City. Thereafter, Major Galvan coordinated with the Philippine Drug Enforcement Agency (PDEA) for the conduct of a buy-bust operation. Thus, a team led by SPO3 Leneal Matias, PO3 Carlo Luna and PO1 Michael Familara (PO1 FAMILARA) was formed to buy "shabu" from "Tune" with the aid of a confidential informant.

Preparations were then made, and two (2) One Hundred Peso bills were marked "MRF" and delivered to the assigned poseur-buyer, PO1 FAMILARA.

The composite team thereafter proceeded to E. Jacinto St. Brgy. Bambang, Pasig City about 3:00 o'clock in the afternoon, the confidential informant pointed to a house where accused-appellant JOSEPH was found standing. SPO3 Leneal Matias and PO3 Carlo Luna positioned themselves at a distance where they can see PO1 FAMILARA, who approached the accused-appellant JOSEPH together with the confidential informant.

The confidential informant greeted the accused-appellant JOSEPH and informed him that his companion, PO1 FAMILARA, would buy Php 200.00 worth of shabu.

Accused-appellant JOSEPH thereafter knocked at the door of "Tune", who turned out to be accused-appellant ANTHONY. Accused-appellant ANTHONY partially opened the door and conferred with the accused-appellant JOSEPH. PO1 FAMILARA thereafter handed the marked money to the accused-appellant JOSEPH, who in turn handed the same to the accused-appellant ANTHONY. Upon receiving the money, accused-appellant ANTHONY then took out a plastic sachet containing a white crystalline substance from his pocket and handed the same to the accused-appellant JOSEPH. Accused-appellant JOSEPH, in turn, handed the plastic sachets to PO1 FAMILARA.

FAMILARA thereafter immediately grabbed accused-appellant JOSEPH's hand while the rest of the team rushed to the scene to arrest the accused-appellants. Accused-appellant ANTHONY attempted to escape to his house but was subsequently likewise apprehended.

Both accused-appellants were bodily frisked after their apprehension. Recovered from accused-appellant ANTHONY were four heat-sealed plastic sachets with white crystalline substances, two (2) marked one hundred peso bills, a pair of scissors, a disposable lighter and one plastic bag containing several pieces of empty plastic sachets. However, nothing aside from the heat-sealed plastic sachet he previously handed to PO1 FAMILARA was recovered from accused-appellant JOSEPH.

Thereafter, the accused-appellants were brought to the Pasig Police Station for further investigation, and the

evidence recovered were marked and forwarded to the PNP Crime Laboratory for examination.

Upon examination by P/Insp. Lourdeliza Gural, the five heat-sealed plastic sachets containing white crystalline substances were found positive [for] Methyamphetamine Hydrochloride or commonly known as "shabu." [7]

In their defense, both accused-appellants denied the charges against them. Joseph Serrano averred that he was at his brother's (Anthony's) house at the time of the arrest to fetch the latter because they, in turn, were going to fetch another sibling in Cubao, Quezon City. He also claimed that the plastic sachets containing the white crystalline substance were shown to him only at the police station. [8]

For his part, Anthony alleged that he was inside the comfort room of his house when he heard a commotion. When he came out of the comfort room, he saw his brother Joseph in handcuffs and being held by a man with a gun. Anthony allegedly politely inquired why the men with guns were holding his brother and the men replied that they were police officers. The said officers then asked the accused-appellants to go with them to the Pasig Police Station, which the accused-appellants both did voluntarily. Anthony further claimed that three police officers searched his house but found nothing and that he and Joseph only came to know the reason for their arrest and detention when they were already in court. [9]

The accused-appellants offered no documentary evidence. [10]

In a Decision [11] dated August 20, 2004, the RTC rendered judgment convicting the brothers Joseph and Anthony Serrano for illegal sale of shabu in Criminal Case No. 12007-D and Anthony Serrano for illegal possession of shabu in Criminal Case No. 12008-D. The fallo of the RTC Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

In Criminal Case No. 12007-D, filed against accused Anthony Serrano and Joseph Serrano for Violation of Section 5, Article II, Republic Act No. 9165 (illegal sale of shabu), both accused are hereby sentenced to LIFE IMPRISONMENT and to solidarily pay a fine of Five Hundred Thousand Pesos (PHP 500,000.00).

In Criminal Case No. 12008-D, filed only against accused Anthony Serrano for Violation of Section 11, Article II, Republic Act No. 9165 (illegal possession of shabu), said accused is hereby sentenced to TWELVE (12) YEARS and ONE (1) DAY to TWENTY (20) YEARS and to pay a Fine of Three Hundred Thousand Pesos (PHP300,000.00).

Considering the penalty imposed by the Court, the immediate commitment of herein accused to the National Penitentiary is hereby ordered.

Pursuant to Section 20 of Republic Act 9165, the amount of Two Hundred Pesos (PHP200.00) recovered from the accused representing the proceeds from the illegal sale of the plastic sachet of shabu is hereby ordered forfeited in favor of the government.

Again, pursuant to Section 21 of the same law, the Philippine Drug Enforcement Agency (PDEA) is hereby ordered to take charge and have custody of the plastic sachets of shabu and drug paraphernalia, subject of these cases.

Costs against the accused. [12]

In arriving at its Decision, the RTC relied on the presumption of regularity in the performance of official duty in ascribing greater credence to the testimonies of the prosecution witnesses vis-à-vis what it termed as "self-serving averments" of the accused-appellants. The trial court further held that in the absence of evidence of improper motive on the part of the prosecution witnesses to testify falsely against the accused-appellants, the testimonies of the former are entitled to full faith and credit. [13]

In view of the imposition of the penalty of life imprisonment on the accused-appellants, the case was elevated to the Court of Appeals for automatic review pursuant to this Court's ruling in *People v. Mateo*.^[14]

As we previously stated at the outset, the Court of Appeals, in its assailed Decision of December 29, 2006, affirmed that of the RTC.

Accused-appellants appealed their convictions via a Notice of Appeal pursuant to Section 13(c), Rule 124 of the Rules of Criminal Procedure, as amended. With the elevation of the records to this Court and the acceptance of the appeal, the parties were required to file their respective supplemental briefs, if they so desired, within 30 days from notice.^[15] In their respective Manifestations,^[16] the parties waived the filing of supplemental briefs and instead merely adopted their earlier Briefs before the Court of Appeals.

In their Brief,^[17] accused-appellants assign two errors allegedly committed by the trial court, to wit:

I.

THE COURT A QUO GRAVELY ERRED IN FINDING THE EXISTENCE OF CONSPIRACY IN THE CASE AT BAR.

II.

THE COURT A QUO ERRED IN FINDING THE ACCUSED-APPELLANTS GUILTY OF THE CRIMES CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.

We are unconvinced that the trial court indeed committed the foregoing errors.

On the first assigned error, accused-appellants contend that the prosecution evidence was insufficient to establish beyond reasonable doubt the fact of conspiracy between them in the illegal drug sale. They point out that the testimony of the poseur-buyer, PO1 Familiar, that it was Joseph who received the marked money from him, was contradictory to his and the other officers' testimonies that the same was recovered from Anthony by another arresting officer, PO3 Luna.

After a careful perusal of the transcripts of the testimonies of the three police officers who were involved in the buy-bust operation, we find no contradiction or inconsistency in the testimony of PO1 Familiar. He and his fellow officer, SPO3 Matias, narrated that although PO1 Familiar handed the marked money to Joseph, Joseph in turn handed the money to his brother, Anthony. It was only after taking the marked bills from Joseph that Anthony produced a sachet of shabu from his pocket which he handed to Joseph to give to the poseur-buyer. Thus, the fact that the marked bills were found in the possession of Anthony during the arrest was more than sufficiently explained.

Reviewing assiduously the prosecution's evidence, we conclude that the trial court correctly found that there was conspiracy between the accused-appellants in this case.

It is well-entrenched in our jurisprudence that:

Conspiracy is always predominantly mental in composition because it consists primarily of a meeting of minds and intent. By its nature, conspiracy is planned in utmost secrecy. Hence, for collective responsibility to be established, it is not necessary that conspiracy be proved by direct evidence of a prior agreement to commit the crime as only rarely would such agreement be demonstrable since, in the nature of things, criminal undertakings are rarely documented by agreements in writing.

But the courts are not without resort in the determination of its presence. The existence of conspiracy may be

inferred and proved through the acts of the accused, whose conduct before, during and after the commission of the crime point to a common purpose, concert of action, and community of interest. In short, conduct may establish conspiracy.

An accepted badge of conspiracy is when the accused by their acts aimed at the same object, one performing one part and another performing another so as to complete it with a view to the attainment of the same object, and their acts though apparently independent were in fact concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments.[18] (Emphases ours.)

Thus, in *People v. Santos*,^[19] which has similar factual antecedents as this case, the Court had the occasion to rule that:

There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. The same degree of proof necessary to prove the crime is required to support a finding of criminal conspiracy. Direct proof, however, is not essential to show conspiracy. It need not be shown that the parties actually came together and agreed in express terms to enter into and pursue a common design. Proof of concerted action before, during and after the crime, which demonstrates their unity of design and objective is sufficient. As correctly held by the trial court, the act of appellant Santos in receiving the marked money from PO3 Luna and handing the same to appellant Catoc, who in turn gave a sachet containing shabu to appellant Santos to give the policeman, unmistakably revealed a common purpose and a community of interest indicative of a conspiracy between the appellants. (Emphasis ours.)

As testified to by the police officers involved in the buy-bust operation, it was accused-appellant Joseph who negotiated with the poseur-buyer, PO1 Familiar, received the buy-bust money, and handed the same to Anthony. Anthony, after receiving the money from Joseph, handed the latter the sachet of shabu to be given to PO1 Familiar. It was Joseph who delivered the illegal drug to PO1 Familiar. When Anthony was frisked during the arrest, the police officers retrieved the marked money that Joseph gave him, together with other sachets of shabu and paraphernalia used in packing the illegal drug, such as several empty plastic bags, a disposable lighter and a pair of scissors. Clearly, there was concerted action between the brothers Joseph and Anthony before, during and after the offense which ably demonstrated their unity of design and objective to sell the dangerous drug.

Thus, we see no reason to disturb the RTC's finding, as affirmed by the Court of Appeals, that:

While it was with accused Joseph Serrano that PO1 Familiar transacted regarding the acquisition of shabu and to whom he paid the buy bust money, it was from accused Anthony Serrano that accused Joseph Serrano actually got the dangerous drugs subject of the transaction. From the above scenario, no other conclusion can be drawn but that both accused were engaged in the illegal trade.[20]

As for the second assigned error in their Brief, accused-appellants insist that the prosecution failed to establish their guilt beyond reasonable doubt. They contend that the RTC was mistaken in giving full faith and credence to the testimonies of the police officers and in upholding the presumption of regularity in the performance of said officers' official functions which they contend cannot overcome the constitutional presumption of innocence in their favor.

Contrary to the accused-appellants' assertion, their constitutional right to be presumed innocent was not infringed by the reliance of the trial court on the presumption of regularity in the performance of official functions on the part of the arresting officers. In several cases, this Court has relied on such a presumption of regularity in order to determine if the testimonies of the police officers who conducted the buy-bust operation deserve full faith and credit.[21] In *People v. Llamado*,^[22] we held:

In cases involving violations of Dangerous Drugs Act, credence should be given to the narration of the incident by the prosecution witnesses especially when they are police officers who are presumed to have performed

their duties in a regular manner, unless there be evidence to the contrary. Moreover, in the absence of proof of motive to falsely impute such a serious crime against the appellant, the presumption of regularity in the performance of official duty, as well as the findings of the trial court on the credibility of witnesses, shall prevail over appellant's self-serving and uncorroborated denial. (Emphasis ours.)

The jurisprudence on this point cited in accused-appellants' Brief cannot be applied to their case. In *People v. Tan*,^[23] *People v. Labarias*^[24] and *People v. Dismuke*,^[25] the accused had sufficiently proven irregularities in the conduct of the buy-bust operation and/or ill motives on the part of the police officers which rebutted the presumption of regularity in the performance of their duty. In the case at bar, accused-appellants did not prove any irregularity in the procedures undertaken by the police officers nor did they ascribe bad faith or any improper motive to the police officers involved. On the contrary, accused-appellant Joseph Serrano testified on cross-examination that he did not know of any reason for the police to file charges against him.^[26]

Verily, we find that the degree of proof required in criminal cases has been met in this instance. Hence, there is no reason to deviate from both the lower courts' findings and conclusions that accused-appellants committed the offenses charged.

Fundamental is the principle that findings of the trial courts which are factual in nature and which involve the credibility of witnesses are accorded respect when no glaring errors; gross misapprehension of facts; and speculative, arbitrary and unsupported conclusions can be gathered from such findings. The reason for this is that the trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial. The rule finds an even more stringent application where said findings are sustained by the Court of Appeals.^[27]

For the successful prosecution of offenses involving the illegal sale of drugs under Section 5, Article II of Republic Act No. 9165, the following elements must be proven: (1) the identity of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment therefor. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of corpus delicti. ^[28]

Here, the records bear out that all the elements of the offense have been established beyond reasonable doubt.

The Court finds the testimonies of the prosecution witnesses credible, straightforward and corroborative of each other. Their testimonies sufficiently proved that a legitimate buy-bust operation took place wherein the accused-appellants were apprehended. Moreover, the shabu subject of the sale was brought to, and properly identified in, court. Accused-appellants were likewise positively identified as the persons who sold the sachet containing the crystalline substance which was later confirmed to be shabu according to the Chemistry Report of the forensic chemist.

PO1 Familara, the poseur-buyer, testified, thus:

Q

Mr. Witness, did you proceed to the place of alias "Tune" as instructed by your chief, Major Galvan?

A

Yes, sir. We went to the place. When we reached the place, my companions, SPO3 Leneal Matias and PO3 Carlo Luna positioned themselves in a place wherein they could see me.

Q

And what is your role in this, you said buy-bust operation to be conducted?

A

I was assigned police poseur-buyer, sir.

Q

Were you able to meet this alias "Tune"?

A

Upon reaching the place, the confidential informant pointed to us the house wherein we saw a male person standing, sir.

Q

And what did you do next when the confidential informant pointed to a person standing near the house?

A

He told us that the place wherein a male person was standing is the house of Tune and the male person who was standing there is Tune's brother, sir.

Q

So, what did you do next, Mr. Witness, when the house of Tune was pointed to you by the confidential informant?

A

When we reached the house, the confidential informant greeted the brother of Tune being familiar to him, sir.

Q

And what was (sic) the greetings all about made by the confidential informant to the brother of Tune?

A

The confidential informant asked the male person, Pare, kumusta na and the male person answered, Okey lang. Anong kailangan mo?

Q

Where were you and the members of your team when the informant greeted the brother of Tune?

A

I was there together with the confidential informant, sir.

Q

How about the other members of your team? Where were they?

A

They positioned themselves in a place farther from us but they could see me, sir.

Q

What else happened after the informant greeted the brother of Tune?

A

The confidential informant told the brother of Tune that I will be buying shabu for two pesos (sic) so he knocked at the door and asked if shabu was available, sir.

Q

Now, when the brother of alias Tune knocked on the door, to (sic) whose house did he knock?

A

Joseph knocked at the door where he was standing, sir.

Q

What happened next, Mr. Witness, after the brother of alias "Tune" knocked on the door near where he was standing?

A

When alias "Tune" came out of the house, the confidential informant pointed him to me saying that that person is Tune, sir.

Q

And what else happened after the man alias "Tune" came out from the house?

A

Joseph and Tune talked and the confidential informant got the money from me so he can pay for the drugs, sir.

Q

And what money did the confidential informant got from you after alias "Tune" came out of the house?

A

The money which the confidential informant took from me where (sic) the two 100-peso bills where I placed my initials (sic) which will be used as buy-bust money for the operation, sir.

Q

Did you give that money to the confidential informant?

A

No, sir. I was the one who personally handed the money to Joseph.

Q

Now, did you tell anything to Joseph when you handed the money?

A

Nothing, sir. It was the confidential informant who talked with him, sir.

Q

What happened after you gave the money to Joseph?

A

After I have given the money to Tune's brother, Joseph again knocked at the door so Tune would come out of

the house, sir.

Q

Mr. Witness, could you tell us again to whom did you give the money which you said was marked?

A

To one named Joseph, sir.

Q

That Joseph is the alias "Tune"?

A

No, sir. He is the brother of one alias "Tune".

Q

After handing the money which you said was marked to Joseph, what happened?

A

After I have given the money to Joseph, Joseph knocked at the door and when Tune opened the door and took the money from Joseph, Tune took [the] sachet of shabu from his pocket to be given to me. Tune gave first the shabu to Joseph and it was Joseph who handed the shabu to me because it was Joseph who was nearer to me, sir.

Q

How far were you from alias "Tune" when he took out from his pocket one sachet of shabu?

A

Dito po hanggang dyan sa upuan.

PROSEC ALBERTO -

Witness pointing to a distance, Your Honor, of at least two meters.

ATTY. SAMSON -

That would be at least three meters from the area where the witness is sitting to this chair.

PROSEC ALBERTO -

We will stipulate that the distance is three meters, Your Honor.

Q

How about your distance to Joseph?

A

About an arm's length, sir.

Q

Now, what did Joseph do with the plastic sachet of shabu after alias Tune gave him the sachet of shabu?

A

After that, he immediately handed to me the sachet of shabu, after which, I immediately grabbed his hand and tried to apprehend him, sir.

Q

Who in particular gave you the plastic of shabu?

A

The brother of Tune, sir.

Q

What is the name of that brother?

A

Joseph Serrano, sir.

Q

Mr. Witness, if that Joseph Serrano is present in Court, will you be able to identify him?

A

Yes, sir.

Q

Please point to him if he is in Court?

COURT INTERPRETER -

Witness tapped the shoulder of a male person who when asked identified himself as Joseph Serrano.

PROSEC ALBERTO -

How about Anthony Serrano? Could you identify him?

A

Yes, sir.

Q

Please do, Mr. Witness, if he is in Court.

COURT INTERPRETER -

Witness tapping the shoulder of a male person who when asked identified himself as Anthony Serrano.[29]

PO1 Familara further testified that when he grabbed Joseph's hand and tried to apprehend the latter, the rest of the buy-bust team approached and helped him in arresting the accused-appellants. Four (4) other plastic sachets of shabu and the marked two 100-peso bills, among others, were later recovered from Anthony.[30] As aforesaid, the testimonies of the other members of the buy-bust team, SPO3 Matias and PO3 Luna, substantially corroborated PO1 Familara's aforementioned testimony.

With respect to the charge of illegal possession of dangerous drugs under Section 11, Article II of Republic Act

No. 9165 against accused-appellant Anthony Serrano, we also find that the elements of the offense have been established by the evidence of the prosecution.

In illegal possession of dangerous drugs, the elements are: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.[31]

The testimonies of the prosecution witnesses, most notably that of the arresting officer, PO3 Luna, showed that four sachets containing white crystalline substance were recovered from accused-appellant Anthony when the latter was told to empty his pockets upon his apprehension.[32] As a result of a chemical analysis thereof, the substance in the plastic sachets was confirmed to be shabu.

In view of the positive and categorical testimonies of the prosecution witnesses, the denials of the accused-appellants must, perforce, fail.

Mere denial cannot prevail over the positive testimony of a witness; it is self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters. As between the categorical testimony that rings of truth, on one hand, and a bare denial, on the other, the former is generally held to prevail.[33]

Accused-appellants' guilt for the offenses charged against them has, therefore, been proven beyond reasonable doubt.

Under Section 5, Article II of Republic Act No. 9165, the sale of any dangerous drug, regardless of quantity and purity, is punishable by life imprisonment to death and a fine of Five Hundred Thousand Pesos (P500,000.00) to Ten Million Pesos (P10,000,000.00). In the absence of any mitigating or aggravating circumstance, the penalty of life imprisonment and a fine of Five Hundred Thousand Pesos (P500,000.00) imposed by the RTC on accused-appellants Joseph and Anthony Serrano in Criminal Case No. 12007-D and upheld by the Court of Appeals was proper.

Likewise sustained is the penalty of twelve (12) years and one (1) day to twenty (20) years imprisonment and a fine of Three Hundred Thousand Pesos (P300,000.00) imposed on accused-appellant Anthony Serrano in Criminal Case No. 12008-D for illegal possession of shabu, the total quantity of which is 0.77 gram. Section 11, Article II of Republic Act No. 9165 imposes the penalty of 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.

WHEREFORE, premises considered, the instant appeal is DENIED. The Decision dated December 29, 2006 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00494 affirming the Decision of the Regional Trial Court of Pasig City, Branch 70, in Criminal Case No. 12007-D and Criminal Case No. 12008-D is hereby AFFIRMED. No costs.

SO ORDERED.

Puno, (Chairperson), Carpio Morales, Bersamin, and Villarama, Jr., concur.

[1] Penned by Associate Justice Vicente Q. Roxas with Associate Justices Josefina Guevarra-Salonga and Apolinario Bruselas, Jr., concurring; rollo, pp. 2-23.

[2] CA rollo, pp. 9-10.

[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] CA rollo, pp. 11-12.

[5] Sec. 11. Possession of Dangerous Drugs.

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.

[6] Records, p. 12.

[7] Rollo, pp. 5-7.

[8] TSN, March 10, 2004, pp. 5-7.

[9] TSN, July 14, 2004, pp. 7-13.

[10] Id. at 17.

[11] CA rollo, pp. 19-25.

[12] Id. at 24-25.

[13] Id. at 23.

[14] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[15] Rollo, p. 28.

[16] Id. at 29-31 and 32-34.

[17] CA rollo, pp. 59-72.

[18] *People v. Medina*, 354 Phil. 447, 457-458 (1998).

[19] G.R. No. 176735, June 26, 2008, 555 SCRA 578, 602-603.

[20] CA rollo, p. 23.

[21] *People v. Santos*, supra note 19; *Dimacuha v. People*, G.R. No. 143705, February 23, 2007, 516 SCRA 513, 525.

[22] G.R. No. 185278, March 13, 2009, 581 SCRA 544, 552.

[23] 432 Phil. 171 (2002).

[24] G.R. No. 87165, January 25, 1993, 217 SCRA 483.

[25] G.R. No. 108453, July 11, 1994, 234 SCRA 51.

[26] TSN, March 10, 2004, p. 9.

[27] *People v. Santos*, *supra* note 19 at 592.

[28] *Id.* at 592-593.

[29] TSN, May 27, 2003, pp. 13-19.

[30] *Id.* at 22 and 24.

[31] *People v. Pringas*, G.R. No. 175928, August 31, 2007, 531 SCRA 828, 846.

[32] TSN, October 7, 2003, pp. 8-9.

[33] *People v. Dumlao*, G.R. No. 181599, August 20, 2008, 562 SCRA 762, 769.

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