

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. SAIDAMEN MACATINGAG Y NAMRI ALIAS SAI, APPELLANT.

G.R. No. 181037. January 19, 2009

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

For review is the Decision[1] of the Court of Appeals in CA-G.R. CR-HC No. 01487, which affirmed in toto the June 16, 2005 Decision[2] of the Regional Trial Court of San Pablo, Laguna, Branch 32 in Criminal Case No. 14730-SP(04), finding appellant Saidamen Macatingag y Namri guilty beyond reasonable doubt of the crime of Violation of Section 5, Article II of Republic Act No. 9165, also known as the "Comprehensive Dangerous Drugs Act of 2002."

In its Brief for the Appellee,[3] the Office of the Solicitor General (OSG) presents the prosecution's version of the facts as follows:

On January 17, 2004, about 8:00 o'clock in the morning, the members of the Philippine National Police (PNP) in Camp Vicente Lim in Canlubang, Calamba City formed a buy-bust team because of a report from a confidential informant about the drug pushing activities of a certain "Sai," who later turned out to be appellant. The team was composed of P/Sr. Insp. Julius Cesar V. Ablan, as leader, and PO3 Marino A. Garcia as the poseur-buyer and PO3 Danilo Leona as the arresting officer, as well as two police officers. After discussing the buy-bust procedure including the pre-arranged signal which is the removal of PO3 Garcia's cap, and the preparation of two P500.00 bills initialed with "MAG," the police authorities immediately proceeded to the target area at the vicinity of Phase I, Villa Antonio, San Pablo City.

Upon arriving thereat about 11:30 o'clock in the morning of that day, PO3 Garcia and the confidential informant waited for appellant at the entrance gate of Villa Antonio Subdivision in San Pablo City. Some twenty (20) minutes later, appellant arrived sporting black pants and dark gray t-shirt. PO3 Garcia was introduced to appellant as the prospective buyer. Appellant, on the other hand, asked PO3 Garcia about the money amounting to P52,500.00. PO3 Garcia then pulled out an envelope containing the two P500.00 bills with the boodle money from his pocket, and demanded the drugs. Appellant thereafter pulled out from his pocket one plastic sachet and handed it to PO3 Garcia. Immediately upon giving appellant the marked money, PO3 Garcia lost no time in giving the pre-arranged signal to PO3 Leona. PO3 Leona thereupon hurriedly seized from appellant the marked money, while PO3 Garcia recovered the plastic sachet containing suspected shabu from appellant. The policemen thereafter brought appellant to their station in Canlubang, Calamba City. PO3 Garcia marked the seized plastic sachet with markings "A" and "MAG" representing his initials, and the date and time of arrest. After making an inventory on the seized suspected shabu, the police authorities requested for the laboratory examination thereof with the PNP Crime Laboratory.

The seized suspected sachet of shabu was shown positive for Methamphetamine Hydrochloride weighing 25.23 grams per Chemistry Report No. D-54-04 issued by P/Insp. Lorna R. Tria, Forensic Chemical Officer of PNP Crime Laboratory.[4]

On January 19, 2004, appellant was charged with Violation of Section 5, Article II of R.A. No. 9165,[5] in an

Information[6] that reads:

That on or about January 17, 2004, in the City of San Pablo, Republic of the Philippines and within the jurisdiction of this Honorable Court, the accused above-named, did then and there willfully, unlawfully and feloniously sell 25.23 grams of Methamphetamine Hydrochloride (shabu), a dangerous drug, without being authorized by law.

CONTRARY TO LAW.[7]

Appellant pleaded not guilty to the offense charged.[8] He maintained that he was at home with his wife on January 17, 2004 when four armed men suddenly entered their house, seized his money, placed handcuffs on his wrists, and forcibly brought him to the police headquarters in Bgy. Canlubang. He averred that he was not allowed to talk with anybody when he was incarcerated for two days and that he was alone during the preliminary investigation. Thereafter, he was transferred to the Bureau of Jail Management and Penology (BJMP) in San Pablo City, where he was formally charged with selling shabu.

On June 16, 2005, the trial court rendered judgment convicting appellant of Violation of Section 5, Article II of R.A. No. 9165, the dispositive portion of which reads:

WHEREFORE, IN VIEW OF THE FOREGOING CONSIDERATIONS, accused SAIDAMEN MACATINGAG Y NAMRI alias "SAI" is found GUILTY beyond reasonable doubt of the crime of Violation of Section 5, Article II of Republic Act 9165 also known as the "Comprehensive Dangerous Drugs Act of 2002", and there being no mitigating circumstance, accused is hereby sentenced to suffer a penalty of LIFE IMPRISONMENT and a fine of FIVE HUNDRED THOUSAND PESOS (P500,000.00), and to pay the costs.

The effects of the crime are ordered confiscated in favor of the government. The custodian of the shabu subject of the case is hereby ordered to submit the same to the Dangerous Drugs Board for proper disposition within 48 hours from receipt of a copy of this judgment and the latter is given 48 hours from receipt of the same to submit an acknowledgment receipt to this Court to form part of the records of this case.

SO ORDERED.[9]

The trial court found that all the elements of the crime charged were present and proven beyond reasonable doubt by the evidence of the prosecution and the testimonies of the poseur-buyer and the arresting officer who are presumed to have performed their duties regularly. It disregarded the allegations of the defense that appellant was a victim of a frame-up and that he was not arrested pursuant to a valid buy-bust operation.

On July 31, 2007, the Court of Appeals rendered the assailed Decision which affirmed in toto the ruling of the trial court. The appellate court held that the constitutional right of appellant against warrantless arrest and search was not violated; that appellant failed to assail the legality of the arrest and the seizure of the sachet of shabu prior to his arraignment or at any stage in the proceedings of the trial court; that the arrest was pursuant to a buy-bust operation which is a valid form of entrapment of felons in the execution of their criminal plan; and that the search conducted on appellant was incidental to a lawful arrest.[10] The appellate court also gave more weight and credence to the testimonies of the members of the buy-bust team because they were not shown to have been impelled by ill-motives in testifying against appellant.

Hence, this petition.[11]

Appellant avers that the trial court and the Court of Appeals gravely erred in giving undue credence to the testimonies of the police officers and in upholding the presumption of regularity in the performance of their official functions. He also assails the validity of his arrest because the police officers were not armed with any warrant when he was arrested. Finally, he assails the propriety of the chain of custody of the shabu allegedly

seized from him due to the non-observation of Section 21, Article II of R.A. No. 9165.[12]

The elements necessary for the prosecution of illegal sale of drugs are (1) the identity of the buyer and the seller, the 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.[13]

These elements have been proven to be present in the instant case. PO3 Garcia who acted as the poseur-buyer, categorically testified about the buy-bust operation – from the time he was introduced by the informant to appellant as the buyer of the shabu; to the time when appellant agreed to the sale; to the actual exchange of the marked money and the heat-sealed sachet containing a white crystalline substance; and until the apprehension of appellant, to wit:

A

I myself together with confidential informant just walked, as well as the area and waited the poseur at the agreed place situated at the vicinity of entrance of Villa Antonio, San Pablo City.

Q

You were waiting for the suspects at the entrance of Villa San Antonio and then what else transpired next?

A

After more or less 20 minutes of waiting ma'am we saw a man wearing a black pants and dark gray t-shirts arrived in our position, it was introduced our confidential informant, he was introduced our confidential that as the poseur, likewise I was also introduced as the seller, [sic] I was also introduced by the confidential informant as the buyer.

Q

Who are the supposed to be the buyer, you were introduced as a buyer?

A

Yes, ma'am.

FISCAL LAGMAN

Q

And this suspect who was the seller, is he present in Court today?

A

Yes, ma'am.

Q

Would you kindly point to him?

A

The 6[th] man from the Steel Cabinet.

INTERPRETER

Makikitayo, anong pangalan mo?

ACCUSED

Saidamen Macatingag po.

x x x x

FISCAL LAGMAN

Q

So, after the introductions were made what happened?

A

The seller identified the money, ma'am, which is amounting to P52,500.00.

FISCAL LAGMAN

Q

What did you do?

A

I immediately pull out from my pocket the envelope which is contained the 2 pieces of P500 bills and the bodol money as agreed amount of P52,500. Likewise as also the seller if it has a dangerous drugs, ma'am.

Q

And then what happened?

A

I immediately pulled out 1 plastic sachet from his pocket and handed it over to me ma'am.

Q

One (1) plastic sachet was handed to you?

A

Yes, ma'am.

Q

After you handed that money?

A

No, ma'am we handed first to me the sachet and he demanded the payment of sachet, ma'am.

x x x x

FISCAL LAGMAN

Q

What happened after the exchanged of the money and plastic sachet?

A

After I gave him the buy bust money as agreed upon before we discovered as the bodol money, I immediately executed the pre-arranged signal which is remove my cap, ma'am.

Q

After you removed your cap, what happened?

A

I saw PO3 Leona arrived and assisted me, after the arresting.

Q

While you were arresting this Saidamen, this accused, what did you do as a matter of procedure, what did you tell him?

A

We informed him the constitutional rights, ma'am. PO2 Leona was able to recovered this custody control of bodol money.

x x x x

Q

So, after that, where did you bring Saidamen?

A

We immediately brought him at our office at Camp Vicente Lim, Canlubang, Laguna together with confiscated pieces of evidence for proper disposition.

Q

You said that you were able to buy 1 plastic sachet of shabu that was supposed to be worth of P52,500, would you be able to identify the plastic sachet if you will be shown to you?

A

Yes, ma'am.

Q

What markings did you place if any?

A

I put my exhibit A, my initials, the date and time of arrest included the month and year, ma'am.

Q

I am showing to you exhibit F, would you kindly tell us if this is the one that you brought from Saidamen Macatingag?

A

Yes, ma'am.[14]

PO3 Leona, the back-up arresting officer during the buy-bust operation corroborated PO3 Garcia's testimony, thus:

Q

After you placed yourself 10 meters a way from the house, from the site and likewise Marino Garcia and the informant and the fence near the site, what happened thereafter?

A

I saw a person came out from that way near the hollow blocks fence wearing black pants and green t-shirt and I saw they were talking with our confidential informant.

FISCAL COMILANG

Q

Could you see the person who just arrived and talked with your confidential informant on said occasion, is he in Court?

A

Yes, sir.

Q

Could you please point to him if he is present?

INTERPRETER

Witness pointed to a person who gave us his name as Saidamen Macatingag.

FISCAL COMILANG

Q

Now, Mr. Witness after the confidential informant and the accused had a conversation what did if any transpired after this conversation?

A

After 30 minutes I saw the pre-arranged signal that this PO3 Marino Garcia will remove his cap.

Q

You mean to say or to impress this court that Mr. Witness that the informant and Mr. Garcia were together when they had a transaction with the accused?

A

Yes, sir because the confidential informant introduced Mr. Marino Garcia to the accused.

x x x x

FISCAL COMILANG

Q

After you saw PO3 Marino Garcia removed his cap, what did you do after that?

A

I went to the area to help PO3 Garcia.

Q

What if any did you find out after helping PO3 Marino Garcia?

A

I arrested Saidamen and I removed from him the 2 pieces of P500 the bodol money.

x x x x

Q

Now after recovering that 2 P500 bills from the accused what will be, were you able to recover?

A

I recovered from the accused the money and it was SPO3 Marino Garcia who recovered the 25 grams of shabu conducted.[15]

Prosecutions involving illegal drugs depend largely on the credibility of the police officers who conducted the buy-bust operation.[16] It is a fundamental rule that findings of the trial courts which are factual in nature and which involve credibility are accorded respect when no glaring errors; gross misapprehension of facts; or 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.[17]

The testimonies of police officers Garcia and Leona, and the sachet of shabu sold by appellant sufficiently proved the crime charged. Moreover, the prosecution was able to establish that the substance recovered from appellant was indeed shabu.[18]

In view of these testimonies and evidence of the prosecution, appellant's denial must fail. The Court has consistently stressed that denial, like alibi, is a weak defense that becomes even weaker in the face of positive identification of the accused by prosecution witnesses.[19] Moreover, appellant failed to adduce clear and convincing evidence to overturn the presumption that the arresting officers regularly performed their duties. It was not shown, by any satisfactory degree of proof, that said policemen were impelled by ill-motives to testify against him. There is, therefore, no basis to suspect the veracity of their testimonies.

With regard to the validity of his arrest, evidence shows that appellant was the subject of a buy-bust operation. In this jurisdiction, the conduct of a buy-bust operation is a common and accepted mode of apprehending those involved in illegal sale of prohibited or regulated drugs. It has been proven to be an effective way of unveiling the identities of drug dealers and of luring them out of obscurity.[20] It catches the violator in flagrante delicto and

the police officers conducting the operation are not only authorized but duty-bound to apprehend the violator and to search him for anything that may have been part of or used in the commission of the crime.[21]

Finally, this Court likewise finds no merit in appellant's contention that the police officers failed to comply with the guidelines on the chain of custody and disposition of the seized sachet of shabu as provided in Section 21, Article II of R.A. No. 9165. Testimonies of prosecution witnesses convincingly state that the integrity and the evidentiary value of the seized item was properly preserved by the apprehending officers. PO3 Garcia testified that he marked the sachet of shabu with his initials, and the date and time of appellant's arrest.[22] PO3 Leona confirmed that he had seen PO3 Garcia mark the same sachet of shabu sold by appellant; that a letter of request for the examination of said sachet was made; and such request was received by the regional crime laboratory office. Thus:

Q

Were you able to see that the shabu was actually was you said that recovered PO3 Marino Garcia from the accused?

A

Yes, sir.

COURT

Q

Did you put your initial in the specimen?

A

I was only accompanied Marino Garcia in bringing to the crime lab.

FISCAL COMILANG

Q

Since you have seen Mr. Witness the actual shabu was taken from the accused, do you know if Mr. Garcia placed any reference on the said article, if any?

A

Yes, sir, the initial of Marino Garcia.

Q

What is that initial?

A

MAG.

Q

Mr. Witness, why do you know that police officer Marino Garcia actually placed his initial on the said specimen or item?

A

Everytime that we conducted the buy bust, it is our SOP to place the marking.

Q

Mr. Witness I will show you that item confiscated Marino Garcia from the accused on the alleged of the item, could you identify it?

A

Yes, sir.

Q

I will show to you now the plastic sachet big plastic sachet which contained white crystalline substance, could you please tell us what is the relationship of this item from that item allegedly taken by Marino Garcia from the accused on which marking was placed?

A

This is the item which is recovered from the accused. Mr. Garcia placed his initial.

Q

What is MAG?

A

MAG referred to Marino A. Garcia.

x x x x

Q

After the specimen and the accused were transferred to the investigator of Regional director what happened to the accused and the specimen?

A

The investigator prepared a paper for the filing of the...and prepared a letter request for the examination.

Q

Would you specify what are those documents prepared by the investigator as pre-requisite of filing of this case?

A

We prepared the letter request for the crime lab request for the accused we first report to the effect...did not suffer physical injury.

x x x x

Q

Do you know if this document was actually received by the addressee?

A

Yes, sir, because I was with them.

Q

What proof that this document was actually received by the addressee?

A

There was a stamp marked of receipt, sir.[23]

As can be gleaned from the foregoing, the seized sachet of shabu was immediately marked for proper identification and, thereafter, forwarded to the Crime Laboratory for examination. The Chemistry Report of the Regional Crime Laboratory Office stated that the specimen submitted by the apprehending officers indeed bore the marking "Exh A MAG 171200-01-14" and that the same gave positive result to the tests for the presence of Methamphetamine Hydrochloride. Forensic Chemical Officer Tria confirmed on the witness stand that she examined the specimen submitted by the PDEA and that she was the one who prepared the Chemistry Report No. D-54-04.[24]

It is thus evident that the identity of the corpus delicti has been properly 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 appellant in this case has the burden to show that the evidence was tampered or meddled with to overcome a presumption of regularity in the handling of exhibits by public officers and a presumption that public officers properly discharge their duties.[25] Appellant failed to discharge such burden.

This Court has held that non-compliance with Section 21, Article II of R.A. No. 9165 will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. 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.[26]

In *People of the Philippines v. Del Monte*,^[27] it was held that:

Under Section 3 of Rule 128 of the Rules of Court, evidence is admissible when it is relevant to the issue and is not excluded by the law or these rules. For evidence to be inadmissible, there should be a law or rule which forbids its reception. If there is no such law or rule, the evidence must be admitted subject only to the evidentiary weight that will be accorded it by the courts. One example is that provided in Section 31 of Rule 132 of the Rules of Court wherein a party producing a document as genuine which has been altered and appears to be altered after its execution, in a part material to the question in dispute, must account for the alteration. His failure to do so shall make the document inadmissible in evidence. This is clearly provided for in the rules.

We do not find any provision or statement in said law or in any rule that will bring about the non-admissibility of the confiscated and/or seized drugs due to non-compliance with Section 21 of Republic Act No. 9165. The issue therefore, if there is non-compliance with said section, is not of admissibility, but of weight — evidentiary merit or probative value — to be given the evidence. The weight to be given by the courts on said evidence depends on the circumstances obtaining in each case.^[28]

All told, We see no reason to disturb the findings of the trial court that appellant is guilty beyond reasonable doubt of illegal sale of a dangerous drug, as defined and penalized in Section 5, Article II of R.A. No. 9165. Under said provision, the illegal sale of any dangerous drug, regardless of its quantity and purity, is punishable by life imprisonment to death and a fine of P500,000.00 to P10,000,000.00.

For illegally selling 25.23 grams of shabu, and there being no modifying circumstance alleged in the Information, the trial court, as sustained by the Court of Appeals, correctly imposed the penalty of life imprisonment in accordance with Article 63 (2) of the Revised Penal Code^[29] and a fine of P500,000.00.

WHEREFORE, the instant appeal is DENIED. The Decision of the Court of Appeals in CA-G.R. CR-HC No. 01487 dated July 31, 2007, sustaining the conviction of appellant Saidamen Macatingag y Namri for violation of Section 5, Article II of Republic Act No. 9165, and imposing upon him the penalty of life imprisonment and a fine of P500,000.00 is hereby AFFIRMED.

SO ORDERED.

Carpio[*], Austria-Martinez, Chico-Nazario, and Leonardo-De Castro,**] JJ., concur.

[*] In lieu of Associate Justice Antonio Eduardo B. Nachura.

[**] Designated as additional member of the Third Division in view of the retirement of Associate Justice Ruben T. Reyes, per Special Order No. 546 dated January 5, 2009.

[1] Rollo, pp. 2-17; penned by Associate Justice Fernanda Lampas-Peralta and concurred in by Associate Justices Edgardo P. Cruz and Normandie B. Pizarro.

[2] Records, pp. 86-99; penned by Judge Zorayda Herradura-Salcedo.

[3] CA rollo, pp. 83-92.

[4] Id. at 87-88.

[5] Section 5, Article II of R.A. No. 9165: 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.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) 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 controlled precursor and essential chemical, or shall act as a broker in such transactions.

If the sale, trading, administration, dispensation, delivery, distribution or transportation of any dangerous drug and/or controlled precursor and essential chemical transpires within one hundred (100) meters from the school, the maximum penalty shall be imposed in every case.

For drug pushers who use minors or mentally incapacitated individuals as runners, couriers and messengers, or in any other capacity directly connected to the dangerous drugs and/or controlled precursors and essential chemical trade, the maximum penalty shall be imposed in every case.

If the victim of the offense is a minor or a mentally incapacitated individual, or should a dangerous drug and/or a controlled precursor and essential chemical involved in any offense herein provided be the proximate cause of death of a victim thereof, the maximum penalty provided for under this Section shall be imposed.

The maximum penalty provided for under this Section shall be imposed upon any person who organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

[6] Records, p. 1.

[7] Id.

[8] Id. at 19.

[9] Id. at 99.

[10] Rollo, p. 7.

[11] Id. at 19.

[12] 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 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;

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory

equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: Provided, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: Provided, however, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours;

(4) After the filing of the criminal case, the Court shall, within seventy-two (72) hours, conduct an ocular inspection of the confiscated, seized and/or surrendered dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals, including the instruments/paraphernalia and/or laboratory equipment, and through the PDEA shall within twenty-four (24) hours thereafter proceed with the destruction or burning of 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 DOJ, civil society groups and any elected public official. The Board shall draw up the guidelines on the manner of proper disposition and destruction of such item/s which shall be borne by the offender: Provided, That those item/s of lawful commerce, as determined by the Board, shall be donated, used or recycled for legitimate purposes: Provided, further, That a representative sample, duly weighed and recorded is retained;

(5) The Board shall then issue a sworn certification as to the fact of destruction or burning of the subject item/s which, together with the representative sample/s in the custody of the PDEA, shall be submitted to the court having jurisdiction over the case. In all instances, the representative sample/s shall be kept to a minimum quantity as determined by the Board;

(6) The alleged offender or his/her representative or counsel shall be allowed to personally observe all of the above proceedings and his/her presence shall not constitute an admission of guilt. In case the said offender or accused refuses or fails to appoint a representative after due notice in writing to the accused or his/her counsel within seventy-two (72) hours before the actual burning or destruction of the evidence in question, the Secretary of Justice shall appoint a member of the public attorney's office to represent the former;

(7) After the promulgation and judgment in the criminal case wherein the representative sample/s was presented as evidence in court, the trial prosecutor shall inform the Board of the final termination of the case and, in turn, shall request the court for leave to turn over the said representative sample/s to the PDEA for proper disposition and destruction within twenty-four (24) hours from receipt of the same; and

(8) Transitory Provision: a) Within twenty-four (24) hours from the effectivity of this Act, dangerous drugs defined herein which are presently in possession of law enforcement agencies shall, with leave of court, be burned or destroyed, in the presence of representatives of the Court, DOJ, Department of Health (DOH) and the accused/and or his/her counsel, and, b) Pending the organization of the PDEA, the custody, disposition, and burning or destruction of seized/surrendered dangerous drugs provided under this Section shall be implemented by the DOH.

[13] *People of the Philippines v. Del Monte*, G.R. No. 179940, April 23, 2008, 552 SCRA 627.

[14] TSN, April 20, 2004, pp. 9-14.

[15] TSN, August 24, 2004, pp. 14-15, 17-18.

[16] *People of the Philippines v. Hajili*, 447 Phil. 283, 295-296 (2003).

[17] *People of the Philippines v. Bayani*, G.R. No. 179150, June 17, 2008, 554 SCRA 741.

[18] Records, p. 11.

[19] *People of the Philippines v. Delmendo*, 357 Phil. 363, 373 (1998).

[20] *People of the Philippines v. Naquita*, G.R. No. 180511, July 28, 2008, SC E-Library.

[21] *People of the Philippines v. Juatan*, 329 Phil. 331, 338 (1996).

[22] TSN, April 20, 2004, p. 14.

[23] TSN, August 24, 2004, pp. 18-20, and 21-22.

[24] TSN, April 13, 2004, pp. 4-6.

[25] *People of the Philippines v. Miranda*, G.R. No. 174773, October 2, 2007, 534 SCRA 552, 568.

[26] *People of the Philippines v. Naquita*, *supra* note 20.

[27] *Supra* note 13.

[28] *Id.* at 637.

[29] Revised Penal Code (1932), Art. 63, par. 2: Rules for the application of indivisible penalties. -- In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

x x x x

2. When there are neither mitigating nor aggravating circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.

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