

**RAUL DAVID, PETITIONER, VS. PEOPLE OF THE PHILIPPINES,
RESPONDENT.***G.R. No. 181861. October 17, 2011*

Ponente: PERALTA, J.

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For this Court's consideration is the Petition for Review on Certiorari[1] under Rule 45 of the 1997 Rules of Civil Procedure dated April 11, 2008 of petitioner Raul David, assailing the Decision[2] dated August 31, 2007 and Resolution[3] dated February 20, 2008 of the Court of Appeals (CA) in CA-G.R. CR No. 29746, affirming the Decision[4] dated April 27, 2005 of the Regional Trial Court, Branch 66, Capas, Tarlac in Criminal Cases No. 1811-1812, finding petitioner Raul David, guilty beyond reasonable doubt of violation of Section 11, Article II of Republic Act (R.A.) 9165.

As shown in the records, the following are the antecedent facts:

After receiving an information from a certain Victor Garcia that a person was selling illegal drugs at L. Cortez St., Brgy. San Jose, Concepcion, Tarlac, the Intelligence Operatives of the Concepcion Police Station, Concepcion, Tarlac, conducted a surveillance on the place from May 25, 2003 until June 23, 2003 when they applied for a search warrant which was granted on the same day. Before implementing the search warrant, the police officers conducted another surveillance from June 23 to June 24, 2003 during which, it was observed that several students were going inside the petitioner's house. It was also during that time that the poseur-buyer was able to buy shabu (methamphetamine hydrochloride) from the petitioner.

On June 29, 2003, around 1:00 p.m., the search team composed of PO3 Mario Flores, PO2 Henry Balabat, SPO1 Rustico Basco and PO1 Roger Paras, implemented the search warrant with the presence of Barangay Captain Antonio Canono. The search team, before conducting the search, sought permission from the petitioner. The two-storey house had two rooms ? one downstairs and the other one upstairs. According to petitioner, the room downstairs was occupied by his brother, Rael David, who was not present during the search, and the room upstairs was occupied by the former.

PO3 Flores found six (6) sachets of marijuana and three (3) plastic sachets of substance suspected to be shabu on top of a padlocked cabinet underneath the stairs. During that time, appellant was around two (2) meters away in the sala.

Thereafter, the police operatives took pictures of the items searched and the barangay captain signed a certificate of good search. The confiscated items were then turned over to Investigator Simplicio Cunanan of the Concepcion Police Station for investigation.

It was revealed in Chemistry Report No. D-143-2003[5] of Police Inspector Jessica R. Quilang that the specimens in the three (3) heat-sealed transparent plastic sachets with "RB-A," "RB-B," and "RB-C" markings were positive for 0.327 gram of shabu, a dangerous drug, while the specimen in the six (6) heat-sealed plastic sachets with

markings "RB-1" up to "RB-6" were positive for 3.865 grams of marijuana.

Thus, appellant was charged in the following Informations:

Criminal Case No. 1811

That on or about 1:00 o'clock in the afternoon of 29 June 2003, at Brgy. San Jose, [M]unicipality of Concepcion, [P]rovince of Tarlac, and within the jurisdiction of this Honorable Court, the said accused did then and there willfully, unlawfully and criminally possessed Six (6) plastic heat-sealed sachets containing dried marijuana leaves weighing more or less 3.865 gram[s] without being authorized by law.

CONTRARY TO LAW.[6]

Criminal Case No. 1812

That on or about 1:00 o'clock in the afternoon of 29 June 2003, at Brgy. San Jose, [M]unicipality of Concepcion, [P]rovince of Tarlac, and within the jurisdiction of this Honorable Court, the said accused did then and there willfully, unlawfully and criminally possessed three (3) plastic heat-sealed sachets containing [METHAMPHETAMINE] HYDROCHLORIDE, better known as Shabu, weighing more or less 0.327 gram without being authorized by law.

CONTRARY TO LAW.[7]

Upon arraignment on August 4, 2003, petitioner, assisted by his counsel, pleaded "not guilty" on both charges.[8] The trial on the merits ensued, where the facts earlier stated were testified to by the witnesses for the prosecution, namely: PO3 Mario Flores, SPO1 Rustico Basco and Officer Jessica Quilang. On the other hand, the defense presented the testimonies of the petitioner; his brother, Rael David, and his sister-in-law, Lilibeth David, the summary of which follows:

Police operatives arrived at the house of the petitioner in the afternoon of June 29, 2003. PO3 Flores grabbed the petitioner and pulled him through his clothes and announced their authority to search. This prompted the petitioner's sister-in-law, Lilibeth David, to get out of the room in order to prevent the said policeman from grabbing the petitioner. To avoid any implantation of evidence, petitioner took off his shirt. Lilibeth David summoned the barangay captain, after which, policemen Basco, Flores and Paras conducted the search which lasted for about thirty (30) minutes, while the other police officer stayed outside with the barangay captain.

Police officers Basco and Paras searched the ground floor first and found nothing. Thereafter, police officer Flores allegedly saw marijuana on top of a cabinet inside the room downstairs. Upon the discovery, the item was photographed. Afterwards, petitioner was asked about the whereabouts of the shabu. At the time of the search, petitioner's brother, Rael David, was not present. Consequently, petitioner was taken to the police station for custodial investigation and during the interrogation, he was not informed of his right to counsel.

The trial court found the petitioner guilty in its Decision dated April 27, 2005, the dispositive portion of which follows:

WHEREFORE, finding the accused guilty beyond reasonable doubt of the crimes of Possession of 3.865 grams of Marijuana and 0.327 gram of [methamphetamine] hydrochloride (shabu), accused is hereby sentenced to suffer the indeterminate penalties of Twelve (12) years & one day, as minimum, to Fourteen years, as maximum, and to pay a fine of Three Hundred Thousand Pesos.

SO ORDERED.[9]

On appeal, the CA affirmed the conviction with modifications, the dispositive portion of its Decision dated August 31, 2007 reads as follows:

WHEREFORE, the Decision of the Regional Trial Court of Capas, Tarlac, Branch 66 in Criminal Cases No. 1811-1812, finding accused-appellant Raul David y Erese, GUILTY beyond reasonable doubt of violation of Section 11, Article II of R.A. 9165 is hereby AFFIRMED with the following MODIFICATIONS:

1) In Criminal Case No. 1811 for illegal possession of marijuana, he is sentenced to suffer the penalty of Twelve (12) Years and One (1) day, as minimum, to Fourteen (14) Years, as maximum, and to pay a fine of THREE HUNDRED THOUSAND PESOS (P300,000.00);

2) In Criminal Case No. 1812 for illegal possession of shabu, he is sentenced to suffer the penalty of Twelve (12) Years and One (1) day, as minimum, to Fourteen (14) Years, as maximum, and to pay a fine of THREE HUNDRED THOUSAND PESOS (P300,000.00).

Costs de oficio.

SO ORDERED.[10]

The CA, in its Resolution[11] dated February 20, 2008, denied appellant's Motion for Reconsideration,[12] hence, the present petition where the appellant presented the following issues:

GROUND FOR THE ALLOWANCE OF THE PETITION

THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING WITH MODIFICATION THE PETITIONER'S CONVICTION. THE ASSAILED DECISION IS NOT IN ACCORDANCE WITH LAW AND APPLICABLE JURISPRUDENCE, AND IF NOT CORRECTED, IT WILL CAUSE GRAVE INJUSTICE AND [IRREPARABLE] INJURY TO HEREIN PETITIONER.

ISSUES PRESENTED FOR RESOLUTION

I

WHETHER THE COURT OF APPEALS ERRED IN GIVING CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES.

II

WHETHER THE COURT OF APPEALS ERRED IN CONVICTING THE PETITIONER DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THAT THE DANGEROUS DRUGS SUBMITTED FOR LABORATORY EXAMINATION AND PRESENTED AS EVIDENCE BEFORE THE TRIAL COURT WERE THE SAME ONES ALLEGEDLY SEIZED.

III

WHETHER THE COURT OF APPEALS ERRED IN MODIFYING THE DECISION OF THE TRIAL COURT WHICH FOUND THE PETITIONER GUILTY OF A SINGLE CHARGE OF VIOLATION OF SECTION 11, ARTICLE II OF REPUBLIC ACT NO. 9165.

The petition lacks merit.

The arguments presented in the petition are purely factual. This is contrary to what is allowed by law when filing a petition under Rule 45 of the Rules of Court.[13] Nevertheless, this Court, upon review of the records of this case, finds that the trial court and the CA's findings of facts should be accorded respect.

For a prosecution for illegal possession of a dangerous drug to prosper, it must be shown that (a) the accused was in possession of an item or an object identified to be a prohibited or regulated drug; (b) such possession is not authorized by law; and (c) the accused was freely and consciously aware of being in possession of the drug.[14]

Based on the evidence presented by the prosecution, it was proven that all the elements for illegal possession of dangerous drugs are present in this case. PO3 Mario Flores, during the search in the house of petitioner, found six (6) sachets of marijuana and three (3) sachets of shabu, both classified as dangerous drugs under the pertinent law, on top of a padlocked cabinet underneath the stairs. Thus, PO3 Flores testified:

Q:

According to you, you were able to discover or find six (6) teabags of marijuana, where did you see these teabags?

A:

On top of their aparador, sir.

Q:

And where is that aparador situated?

A:

Underneath the stairs, sir.

Q:

And according to you also, you found three (3) plastic bags of shabu, where did you discover these three (3) plastic sachets?

A:

Also on top of the aparador, sir.

Q:

The same aparador where you discovered the six (6) teabags of marijuana?

A:

Yes, sir.[15]

The above testimony was corroborated by SPO1 Rustico Basco, who said:

Q:

Upon entering the house, what did you do there?

A:

Because we were already allowed by Lilibeth David to conduct the search, we started doing so, sir.

Q:

By the way, who among your companions, or who among you in the group, actually entered the house?

A:

Myself, PO3 Mario Flores and PO1 Roger Paras, sir.

COURT:

Q:

At the time, where was the Barangay Captain?

A:

He was then inside the house, you Honor, but he did not conduct the search.

Q:

Who personally, what part of the house did he search?

A:

I went upstairs, sir.

Q:

How about your companions Flores and Paras?

A:

PO3 Flores conducted the search downstairs, while PO1 Paras was with me, sir.

COURT:

Q:

At the time when you were upstairs, where was Raul David?

WITNESS:

A:

He was downstairs, your Honor, seated on the sofa beside Lilibeth.

Q:

How about the wife of Raul David?

A:

The wife was near the stairs, your Honor.

Q:

When you entered the elevated room, who were your companions?

A:

PO1 Roger Paras and Lilibeth David were the ones who went with me when I conducted the search upstairs since the room is only small.

FISCAL Llobrera:

Q:

What happened to your search?

A:

PO3 Mario Flores was able to find six sachet(s) of marijuana, three sachet(s) of shabu.

Q:

Items were discovered by whom?

A:

By Officer Flores and PO1 Paras, sir.[16]

However, petitioner questions the credibility of the witnesses for the prosecution. He argues that the testimony of PO3 Flores that he found six (6) teabags of marijuana and three (3) sachets of shabu remains uncorroborated as SPO1 Basco testified that he did not see PO3 Flores when the latter discovered the said dangerous drugs. Even so, this does not diminish the fact that dangerous drugs were found during the search of the house. The Office of the Solicitor General (OSG), in its Comment[17] dated October 16, 2008, was correct in pointing out that during the operation, it is not incredible that only one of the operatives found the dangerous drugs because they were scattered throughout the house. The OSG stated:

x x x The fact that PO3 Flores was the only one who discovered the illegal substances is not incredible. It must be considered that during the operation, the police operatives scattered themselves throughout the house in order to conduct the search. SPO1 Basco searched the upper room, while PO3 Flores searched the lower portion of the house. Noteworthy, the testimonies of SPO1 Basco and PO3 Flores jibed on material points, particularly on the illegal objects seized. SPO1 Basco corroborated PO3 Flores' testimony that he found six (6) sachets of marijuana and three sachets of shabu during the search. x x x[18]

Petitioner also claims that the prior surveillance before the issuance of a search warrant was not clearly established by the testimonies of the witnesses. He insists that SPO1 Basco testified that a surveillance was conducted by PO3 Flores and PO1 Joel Canlas from May 25, 2003 to June 24, 2003, but PO3 Flores denied having participated in the surveillance and pointed to PO1 Canlas as the one who conducted the surveillance. According to petitioner, such inconsistency in the testimony is damaging. This Court finds no significance in the said inconsistency as it is merely minor. What is important is that they were able to establish through their testimonies that a surveillance indeed took place before and even after the issuance of the search warrant. PO3 Flores testified during clarifications from the court that:

COURT:

Some questions from the court.

Q:

Prior to the application of search warrant, was there any surveillance conducted by your office?

A:

Yes, your Honor.

Q:

Who conducted that surveillance?

A:

PO1 Canlas, your Honor.

Q:

Why did you still conduct surveillance after issuing the search warrant?

A:

To collate concrete evidence against the suspects, sir.

COURT:

Q:

Why? Are you not sure when you applied for search warrant that Raul and Rael were not in possession of the dangerous drugs?

A:

We were certain, your Honor; however, we were afraid that the shabu and the marijuana in their possession had already been consumed that is why we waited for some more time, your Honor.[19]

Although the same witness above confirmed that he was not involved in the surveillance conducted prior to the issuance of the search warrant, he testified that he was involved in the surveillance after the issuance of the same search warrant, thus:

FISCAL LLOBRERA

Q:

Officer, upon obtaining that search warrant, what did you do, if any?

A:

We informed our Chief of Police that our application for the issuance of a search warrant was already approved, sir.

Q:

After making that report, what else happened?

A:

We ordered that a surveillance be conducted, sir.

Q:

Do you know if that surveillance [was] actually conducted?

A:

Not yet, sir.

Q:

What actually finally - was there any surveillance made?

A:

Yes, sir, we were the ones who conducted the surveillance, sir.[20]

x x x x

ATTY. GARCIA

Q:

How many times did you conduct surveillance?

A:

Two (2) times, sir.

Q:

Can you tell us the specific date?

A:

June 23 and 24, sir.

Q:

And in your surveillance on June 23 and 24, you were able to see young students going to the house of the accused in buying dangerous drugs?

A:

It was on June 24 when I saw students going there, sir.

Q:

At that time, you did not have (sic) in possession of the search warrant?

A:

We were already equipped or armed with the search warrant, sir.[21]

It is a settled rule that in cases involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary.[22] It must be emphasized that their testimonies in open court are considered in line with the presumption that law enforcement officers have performed their duties in a regular manner.[23] In the absence of proof of motive to impute falsely a crime as serious as violation of the Comprehensive Dangerous Drugs Act, the presumption of regularity in the performance of official duty, as well as the findings of the trial court on the credibility of the prosecution witnesses, shall prevail over petitioner's self-serving and uncorroborated denial.[24] Moreover, the factual findings of the trial court, when affirmed by the Court of Appeals, are conclusive and binding on this Court.[25]

Petitioner further contends that the testimonies of the defense witnesses were not considered; otherwise, it would have been proven that the dangerous drugs found on top of the aparador were planted. It must be remembered that the defenses of denial and frame-up have been invariably viewed by this Court with disfavor for it can easily be concocted and is a common and standard defense ploy in prosecutions for violation of Dangerous Drugs Act.[26] In this case, petitioner was not able to present any concrete or strong evidence that would support his allegation that he was the victim of a frame-up aside from his insinuation that had the trial court considered the testimonies of the witnesses he presented, the same court could have inferred the presence of a set-up or the planting of evidence on the part of the police operatives. In order to prosper, the defenses of denial and frame-up must be proved with strong and convincing evidence.[27]

In claiming that the identity of the drugs subject of the charges was not proven beyond reasonable doubt, petitioner states that there was no marking of the substances seized immediately after the search and there was no proof that the drugs presented in court were the same drugs seized from his house. Yet a close reading of the

records shows the opposite.

Section 21, paragraph 1, Article II of R.A. 9165 provides:

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;

The above provision is implemented by Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of R.A. No. 9165, thus:

(a) 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: Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

The prosecution was able to prove the unbroken chain of custody of the items seized. As earlier discussed, the witnesses for the prosecution were able to categorically testify that the dangerous drugs were found in the residence of the petitioner during their search. As shown in Chemistry Report No. D-143-2003, which was identified and testified on by Police Inspector Jessica Ramos Quilang, the three (3) plastic sachets containing a substance was positive for methamphetamine hydrochloride and marked as "RB-A," "RB-B," and "RB-C" and the six (6) plastic sachets were positive for marijuana and marked as "RB-1," "RB-2," "RB-3," "RB-4," "RB-5" and "RB-6." [28] Thereafter, as testified by PO3 Flores, the items were photographed and the barangay captain signed a certificate of good search, thus:

FISCAL LLOBRERA:

Q:

And then after discovering the shabu and marijuana, what else happened?

A:

We took pictures of the shabu and marijuana sir inside their house and we showed said pictures to the barangay officials, sir.

Q:

And where was Raul David when you were taking pictures of the marijuana and shabu?

A:

He was inside their house seated, sir.

Q:

How far was he from you?

A:

Two (2) meters, sir.

Q:

Was there any object that obstructed his view between you and him?

A:

None, sir.

Q:

After taking pictures of the shabu and marijuana, what else happened?

A:

We requested the barangay captain to affix his signature on the certificate of good search, sir.

COURT:

Q:

During the time of the search, where was the barangay captain?

A:

He was with us, your Honor.

Q:

In the conduct of your search, did you have any civilian component?

A:

None, your Honor, only the barangay captain.

FISCAL LLOBRERA:

Q:

Please give us the name of the barangay captain.

A:

Barangay Captain Canono, sir.

Q:

When you discovered the six (6) teabags of marijuana as well as the three (3) plastic sachets of shabu, where was [B]arangay [C]aptain Canono then?

A:

He was inside the house, sir.

COURT:

Q:

[And] the aparador was visible to the barangay captain during that time when you first see (sic) the marijuana and the shabu?

A:

The aparador was visible to the barangay captain, your Honor.

FISCAL LLOBRERA:

Q:

Was the aparador padlocked or not?

A:

The aparador was padlocked and it is (sic) on top of it where we found the items, sir.

Q:

Right on top of the aparador?

A:

Yes, sir.

Q:

It was not placed in a drawer?

A:

No, sir, on top itself of the aparador.

Q:

And so what did you do with the shabu and the marijuana?

A:

We confiscated the items, sir.

Q:

After confiscating it, what did you do with it?

A:

We showed the shabu and the marijuana to the Spouses David, sir.

Q:

After showing them to the spouses, what else happened?

A:

We brought the evidence to the police station, sir.

Q:

How about Raul David, what did you do with him?

A:

We also brought him to the police station, sir.

Q:

What happened in the police station?

A:

We indorsed Raul David and the evidence we confiscated to our investigator, sir.[29]

Therefore, it is apparent from the above disquisition that the integrity and evidentiary value of the items seized were well-preserved. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as it would be utilized in the determination of the guilt or innocence of the accused.[30] Anyway, this Court has consistently ruled that non-compliance with the requirements of Section 21 of R.A. No. 9165 will not necessarily render the items seized or confiscated in a buy-bust operation inadmissible.[31] Strict compliance with the letter of Section 21 is not required if there is a clear showing that the integrity and the evidentiary value of the seized items have been preserved, i.e., the items being offered in court as exhibits are, without a specter of doubt, the very same ones recovered in the buy-bust operation.[32] Hence, once the possibility of substitution has been negated by evidence of an unbroken and cohesive chain of custody over the contraband, such contraband may be admitted and stand as proof of the corpus delicti notwithstanding the fact that it was never made the subject of an inventory or was photographed pursuant to Section 21 (1) of Republic Act No. 9165.[33]

Anent petitioner's contention that having been caught in possession of shabu and marijuana in one occasion, he should have been charged with, and convicted of, one offense only, this Court finds it meritorious.

Before the enactment of R.A. 9165, the governing law on dangerous drugs was R.A. 6425, which differentiated regulated drugs from prohibited drugs. It laid down different provisions for possession of regulated and prohibited drugs. Under R.A. 9165, the distinction between regulated and prohibited drugs has been removed and both are now classified as dangerous drugs. The eradication of such distinction was the real intention of the legislators. As read from the transcript of stenographic notes of the Twelfth Congress on the deliberation of R.A. 9165, then Senate Bill No. 1858:

Senator Leviste. And we are in support of the good sponsor's conviction to give teeth to this new law and to go all out against drugs.

Under the old law - R.A. No. 6425 - a classification was provided between a prohibited drug and a regulated drug. I believe in the new proposed measure, there is no distinction between the two categories. And in lieu of the two categories, the new measure merely provides for an all-embracing category of dangerous drugs.

May we know, Mr. President, the significance of eliminating the two categories in the old law because there might be adverse implications if we do not classify "prohibited" from "regulated" drugs. There are instances, for example, when a cancer patient - I know I am not a doctor but Senator Flavie might be able to enlighten us here - is allowed to use with prescription from a licensed physician regulated drugs. Morphine, for example, for pain killers. How would this declassification affect this case?

Senator Barbers. Well, her point is very valid, Mr. President. The reason as to why under R.A. No. 6425 there was a distinction between "prohibited" and "regulated" drugs is that this is in consonance with the International Treaties on Drugs under the UN Convention of 1961, 1971, and 1988. Now, when we speak of narcotics under this treaty, it would mean "prohibited" drugs. When we speak of psychotropic under the same convention, it

would mean "regulated" drugs. In this particular proposal, we did not make any distinction anymore. Why? Because whether these are regulated, whether these are prohibited, these are considered as dangerous drugs unless authorized by law. That a patient, for example, is in need of some drugs, morphine, for example, then that would be another story.[34]

x x x x

Senator De Castro. Mr. President, on page 3, line 3, the term used is "dangerous," while under our present law, Republic Act No. 6425, as amended, the term used is "prohibited." May we know from the sponsor the distinction between the words "prohibited" and "dangerous."

Senator Barbers. Yes, Mr. President. Under Republic Act No. 6425, there is a distinction between prohibited drugs and regulated drugs. When we speak of prohibited drugs, it would mean that there is no prescription needed. While in the regulated drugs, a prescription is needed in order to purchase that kind of drug from the drugstore.

Under the present bill, Mr. President, we removed the distinction and we came up with the term "dangerous drugs" instead of classifying these drugs into prohibited and regulated ones. Why? Because there are prohibited drugs that sometimes are also being dispensed with prescription, like for example, morphine and opium. These could be used as pain relievers. There are also regulated ones which become prohibited drugs when we use a proportion which could not be considered as therapeutic in nature.

Senator De Castro. Therapeutic and that includes marijuana, Mr. President?

Senator Barbers. That is correct, Mr. President, although marijuana is not dispensed in drugstores. We classify marijuana under RA 6425 as a prohibited drug, while under this measure marijuana is considered as a dangerous drug.[35]

x x x x

Senator Cayetano. Mr. President, I also note that there is no definition of "regulated drug" at least in my cursory examination. Has the good sponsor deleted the provision of the Dangerous Drugs Act of 1972 or Republic Act No. 6425 where there is a definition of "regulated drug?" And if so, I just want to find out why this particular definition of what constitutes a regulated drug is not included in this bill?

Senator Barbers. That is correct, Mr. President. In the present measure, we already deleted prohibited drugs as well as regulated drugs. We came up with one item only from regulated, from prohibited, to dangerous drugs. That would be the classification now. Whether it is regulated or prohibited, it is of no moment to us. What is important is that we define dangerous drugs.

Senator Cayetano. No. The reason I asked that, Mr. President, is, under the present law, "regulated drugs" is defined and the penalties for transgression of the requirements of getting a regulated drug is different from the transgression of committing any act in relation to what constitutes purely dangerous drugs.

So this is the reason I am inquiring because it is important. Regulated drugs per se are not dangerous drugs, regulated in the sense that it may be dispensed by a certified physician or members of the medical or dental profession.

The only transgression or penalty that may be included on regulated drug is, for instance, if one imports regulated drugs without the necessary authority from the present Dangerous Drugs Board, and also the manufacture as well as the sale of the same.

So that is the reason I am inquiring, Mr. President.

Senator Barbers. I have with me here, Mr. President, a definition of a "regulated drug," but this is applicable

under Republic Act No. 6425. Under my proposal, we deleted the definition. We concentrated on dangerous drugs.

Senator Cayetano. So am I correct then that the omission is deliberate, but it does not repeal the provision of Republic Act No. 6425 which is known as the "Dangerous Drugs Act of 1972," vis-a-vis the regulated drugs? It does not.

Senator Barbers. Mr. President, this proposed measure is practically a repeal of Republic Act No. 6425.[36]

From the above-quoted, it is clear that the deliberate elimination of the classification of dangerous drugs is the main reason that under R.A. 9165, the possession of any kind of dangerous drugs is now penalized under the same section. The deliberations, however, do not address a case wherein an individual is caught in possession of different kinds of dangerous drugs. In the present case, petitioner was charged under two Informations, one for illegal possession of six (6) plastic heat-sealed sachets containing dried marijuana leaves weighing more or less 3.865 grams and the other for illegal possession of three (3) plastic heat-sealed sachets containing shabu weighing more or less 0.327 gram. Under Section 11 of R.A. 9165, the corresponding penalty for each charge, based on the weight of the dangerous drugs confiscated, is imprisonment for twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum, and a fine of three hundred thousand pesos (P300,000.00). The trial court imposed a single penalty of imprisonment for twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum, and a fine of three hundred thousand pesos (P300,000.00), while the CA modified it by imposing the corresponding penalty for each charge.

Absent any clear interpretation as to the application of the penalties in cases such as the present one, this Court shall construe it in favor of the petitioner for the subject provision is penal in nature. It is a well-known rule of legal hermeneutics that penal or criminal laws are strictly construed against the state and liberally in favor of the accused.[37] Thus, an accused may only be convicted of a single offense of possession of dangerous drugs if he or she was caught in possession of different kinds of dangerous drugs in a single occasion. If convicted, the higher penalty shall be imposed, which is still lighter if the accused is convicted of two (2) offenses having two (2) separate penalties. This interpretation is more in keeping with the intention of the legislators as well as more favorable to the accused.

WHEREFORE, the Petition for Review on Certiorari dated April 11, 2008 of petitioner Raul David is hereby DENIED. Consequently, the Decision dated August 31, 2007 and Resolution dated February 20, 2008 of the Court of Appeals are hereby AFFIRMED with the MODIFICATION that the penalty of imprisonment for Twelve (12) years & one (1) day, as minimum, to Fourteen (14) years, as maximum, and a fine of Three Hundred Thousand Pesos (P300,000.00) be imposed.

SO ORDERED.

Velasco, Jr., (Chairperson), Abad, Mendoza, and Perlas-Bernabe, JJ., concur.

[1] Rollo, pp. 11-129.

[2] Penned by Associate Justice Marlene Gonzales-Sison, with Associate Justices Juan Q. Enriquez, Jr. and Vicente S.E. Veloso, concurring; rollo, pp. 94-109.

[3] Id. at 128-129.

[4] Id. at 61-68.

[5] Exhibit "C" for the prosecution, records, Vol. II.

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

[7] Id. at 2.

[8] Id. at 11.

[9] Rollo, p. 68.

[10] Id. at 108.

[11] Supra note 3.

[12] Rollo, pp. 110-118.

[13] Section 1. Filing of petition with Supreme Court. - A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth.

[14] Dolera v. People, G.R. No. 180693, September 4, 2009, 598 SCRA 484, 492, citing People v. Tiu Won Chua, 453 Phil. 177, 186 (2003).

[15] TSN, September 22, 2003, pp. 12-13.

[16] TSN, July 14, 2005, pp. 5-6.

[17] Rollo, pp. 141-168.

[18] Id. at 155.

[19] TSN, September 22, 2003, pp. 32-33, records, Vol. III.

[20] Id. at 7-8.

[21] Id. at 22-23.

[22] People v. Fabian, G.R. No. 181040, March 15, 2010, 615 SCRA 432, 443, citing People v. Navarro, G.R. No. 173790, October 11, 2007, 535 SCRA 644, 649, citing People v. Saludes, G.R. No. 144157, June 10, 2003, 403 SCRA 590, 595-596.

[23] Id. at 444.

[24] Id. at 444-445.

[25] Id. at 443, citing People v. Mateo, G.R. No. 179478, July 28, 2008, 560 SCRA 397, 413; See Teodosio v. Court of Appeals, G.R. No. 124346, June 8, 2004, 431 SCRA 194, 203 and People v. Cabugatan, G.R. No. 172019, February 12, 2007, 515 SCRA 537, 546-547.

[26] See People v. Lazaro, Jr., G.R. No. 186418, October 16, 2009, 604 SCRA 250, 269.

[27] Id., citing People v. Naquita, G.R. No. 180511, July 28, 2008, 560 SCRA 430, 449; People v. Concepcion, G.R. No. 178876, June 27, 2008, 556 SCRA, 421, 440; People v. Santiago, G.R. No. 175326, November 28, 2007, 539 SCRA 198, 212 .

[28] TSN, January 15, 2004, pp. 5-6.

[29] TSN, September 22, 2003, pp. 16-18.

[30] *People v. Rosialda*, G.R. No. 188330, August 25, 2010, 629 SCRA 507, 521.

[31] *People v. Joel Roa*, G.R. No. 186134, May 6, 2010, 620 SCRA 359, 371-372, citing *People v. Pringas*, G.R. No. 175928, August 31, 2007, 531 SCRA 828, 842-843; *People v. Alberto*, G.R. No. 179717, February 5, 2010, 611 SCRA 706, 718; *People v. Capco*, G.R. No. 183088, September 17, 2009, 600 SCRA 204, 213; *People v. Teodoro*, G.R. No. 185164, June 22, 2009, 590 SCRA 494, 507.

[32] *Id.*

[33] *Id.*

[34] TSN, October 23, 2001, pp. 51-52.

[35] TSN, January 15, 2002, pp. 80-81.

[36] TSN, January 16, 2002, pp. 21-22.

[37] *People v. Subido*, No. L-21734, September 5, 1975, 66 SCRA 545, 551.

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