

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EMILIO RIVERA Y CABLANG ALIAS 'BOY,' ACCUSED-APPELLANT.

G.R. No. 182347. October 17, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

For Review under Rule 45 of the Revised Rules of Court is the Decision[1] dated 27 November 2007 of the Court of Appeals in CA-G.R. CR-H.C. No. 02175 entitled, People of the Philippines v. Emilio Rivera y Cablang alias 'Boy,' affirming the Decision[2] rendered by the Regional Trial Court (RTC) of Malabon City, Branch 72, in Criminal Case No. 27778-MN, finding accused-appellant Emilio Rivera y Cablang alias 'Boy' guilty beyond reasonable doubt of violating Section 5 (Selling of Dangerous Drugs), Article II of Republic Act No. 9165, as amended, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The following are the factual antecedents:

On 22 October 2002, accused-appellant was charged before the RTC of Malabon City, with violation of Section 5,[3] Article II of Republic Act No. 9165 in Criminal Case No. 27778-MN. The Information contained the following allegations:

That on or about the 21st day of October 2002 in the City of Malabon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being a private person and without authority of law, did, then and there, willfully, unlawfully and feloniously sell and deliver for consideration in the amount of P100.00, to poseur-buyer One (1) heat-sealed transparent plastic sachet containing white crystalline substance containing net weight 0.25 gram which substance when subjected to chemistry examination gave positive result for Methylamphetamine Hydrochloride otherwise known [as] "shabu" a dangerous drug.[4]

When arraigned on 8 November 2002, accused-appellant, assisted by a counsel de officio, entered a plea of 'NOT GUILTY.'[5]

The prosecution's version is based mainly on the testimony of its lone witness, Police Officer (PO) 2 Allan Llantino, the designated poseur-buyer.

At around 3:00 o'clock in the afternoon of 21 October 2002, a confidential informer personally appeared at their police station. Confidential information was relayed to PO2 Allan Llantino of the District Drug Enforcement Unit, Northern Police District Office, Larangay, Caloocan City that one alias 'Boy' was selling shabu. Said information was then relayed to the Chief of the Station Police, Superintendent Reynaldo B. Orante, who immediately ordered PO2 Llantino to organize a team to conduct a buy-bust operation.

At around 4:00 o'clock in the afternoon of the same day, a team composed of Police Inspector Rodrigo Soriano, PO2 Henry Pineda, PO2 Joel Borda, PO2 Allan Llantino, and PO1 Ronald Mesina, was dispatched at Pitong Gatang, Dampalit, Malabon City, to conduct a buy-bust operation against accused-appellant, then known to them only as alias Boy. PO2 Llantino was designated as poseur-buyer while the rest of the team served as his back-up.

One marked one hundred peso bill bearing Serial No. LS 034778 was prepared to be used in the operation.[6]

Thereafter, PO2 Llantino, together with the confidential informant, went ahead to the target area at around 5:30 o'clock in the afternoon of that day, and while walking, they saw accused-appellant alias Boy standing. They then approached accused-appellant and the confidential informant introduced PO2 Llantino as a friend. After the introduction, appellant asked PO2 Llantino if he would buy shabu. He replied positively and told accused-appellant "piso," meaning one hundred pesos. PO2 Llantino handed the money to accused-appellant and the latter took from his right pocket one plastic sachet and handed it to PO2 Llantino. After the accused-appellant handed the plastic sachet, PO2 Llantino raised his right hand as the pre-arranged signal to his companions. Thereafter, his companions (P/Insp. Rodrigo Soriano, PO2 Henry Pineda, PO2 Joel Borda, and PO1 Ronald Mesina) proceeded to where PO2 Llantino was.

Accused-appellant was arrested by PO2 Llantino with the help of his companions, specifically PO2 Borda and PO2 Pineda, and was brought to the Caloocan Police Station. PO2 Llantino turned over the confiscated plastic sachet containing the white crystalline substance to the investigator who put his markings "BB" (meaning buy-bust) and made a laboratory request.[7] The seized item and request for laboratory examination were delivered[8] by PO1 Mesina to the Northern Police District Office Crime Laboratory Office (NPDO-CLO) for analysis based on the request for laboratory examination signed by District Drug Enforcement Group (DDEG) NPD Chief Reynaldo B. Orante.[9] During the operation, the team recovered from him one (1) piece of One Hundred Peso bearing Serial Nos. HL 034748[10] and with markings AL representing the initials of PO2 Allan Llantino, as the buy-bust money used in the operation.

The defense presented a counterstatement of facts, relying on the testimony of accused-appellant Emilio Rivera as witness.

Accused-appellant denied the accusations against him. He testified that on 21 October 2002, at around 5:00 o'clock in the afternoon, he was cleaning 'dampalit weeds' at the vacant lot near his house when he heard somebody knocking at the gate of said lot. The caretaker of the lot, Alberto Cruz, Jr., opened the gate. Two (2) persons entered and introduced themselves as police officers. They asked the accused if he was 'Boy Anggo,' to which he replied in the affirmative. The police officers then drew guns and poked them at him. They frisked him but when nothing was found in his person, they held and dragged him to a waiting vehicle. He resisted and asked them why they were taking him. They replied, 'matikas ka.' Accused-appellant was then brought to the Larangay Police Headquarters. It was only there where he was informed of the charges against him.

Accused-appellant identified the two (2) police officers who arrested him as Borda and Pineda. He became aware of their names on the day following his arrest when he saw them in uniform and with nameplates. He denied having been arrested by PO2 Llantino and said he only saw him during the trial.

Another defense witness, Alberto Cruz, Jr., was called to the stand but his presentation was dispensed with after the prosecution and the defense admitted that he will merely corroborate the testimony of the accused.

On rebuttal, PO2 Llantino was recalled but he was not presented anymore because the prosecution and the defense admitted that he will just insist that he will merely deny the claims of the defense witnesses.

Alberto Cruz, Jr. was recalled on sur-rebuttal but was not presented anymore because the parties admitted that he will just insist that his version is the correct one and will merely deny the admitted rebuttal testimony of PO2 Llantino.

The plastic sachet containing the white crystalline substance allegedly recovered from accused-appellant was submitted to the NPDO-CLO for chemical analysis. The Request for Laboratory Examination[11] indicated that

the following evidence was submitted:

One (1) pc. of small heat sealed transparent plastic sachet containing white crystalline substance believed to be Methamphetamine Hcl or shabu with marking as "ERC-BB"

Forensic Chemist Albert S. Arturo examined the plastic sachet containing the white crystalline substance. After conducting a qualitative examination on the above-said specimen, the substance weighing 0.25 gram was found positive for methylamphetamine hydrochloride, a dangerous drug, as contained in Physical Science Report[12] No. D-1162-02 dated 22 October 2002.

On 2 April 2004, the RTC of Malabon City Branch 72, convicted accused-appellant and found him guilty beyond reasonable doubt in Criminal Case No. 27778-MN. The dispositive portion of the Decision[13] reads:

WHEREFORE, premises considered, judgment is hereby rendered finding accused Emilio Rivera y Cablang @ Boy guilty beyond reasonable doubt of the crime charged against him in this case. Pursuant to Section 5, Art. II, RA 9165, he is hereby sentenced to Life Imprisonment and to pay a fine of P500,000.00, and to pay the costs.

The shabu subject of this case is forfeited in favor of the government to be disposed of under rules governing the same. OIC-Branch Clerk of Court Enriqueta A. Marquez is hereby enjoined to immediately turn the same over to the proper authority for final disposition.

On 25 May 2004, accused-appellant filed a Notice of Appeal[14] to the Court of Appeals, claiming that the prosecution failed to overthrow the presumption of innocence on the ground that the trial court not only relied heavily on the testimony of a lone witness but also failed to follow the required procedure in the custody and disposition of confiscated dangerous drugs. The case was docketed as CA-G.R. CR-H.C. No. 02175.

On 27 November 2007, the Court of Appeals affirmed the decision of the RTC, viz.:

WHEREFORE, premises considered, the Decision of the Regional Trial Court of Malabon City, Branch 72, in Criminal Case No. 27778-MN, dated April 2, 2004, promulgated on May 17, 2004, finding accused-appellant guilty beyond reasonable doubt of violating Sec. 5, Art. II of Republic Act No. 9165 (Comprehensive Dangerous Drugs Act of 2002), as amended, sentencing him to suffer the penalty of life imprisonment and ordering him to pay a fine of Five Hundred Thousand (P500,000.00) Pesos is hereby AFFIRMED and UPHeld.[15]

Accused-appellant elevated the case to this Court via Notice of Appeal.[16] In its Resolution[17] dated 16 June 2008, this Court resolved to notify the parties that they may file their respective supplemental briefs, if they so desire, within thirty (30) days from notice.

To avoid repeating previous arguments, the defense and the prosecution adopted their respective appellant's[18] and appellee's briefs,[19] instead of filing supplemental briefs.

The defense raises a singular issue -

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO OVERTHROW THE PRESUMPTION OF INNOCENCE IN HIS FAVOR.[20]

The defense focused on several factors to cast doubt on the allegations against accused. First, in convicting the accused, the trial court heavily relied on the testimony of the lone prosecution witness, PO2 Allan Llantino, who claimed he had companions at that time but none of them corroborated his version. Second, the police officers failed to follow the procedure outlined in paragraph 1, Section 21[21] of Republic Act No. 9165 on the seizure

and custody of the suspected dangerous drugs as nothing in the records would show that immediately after the seizure, the police officers conducted a physical inventory and photographed the same. Thus, the defense contends there is a gap in the chain of custody and a clear doubt on whether the specimen examined by the chemist and eventually presented in court were the same specimen allegedly recovered from accused-appellant.

The Office of the Solicitor General (OSG), on the other hand, maintains that the presumption of regularity in the performance of official functions was not rebutted by accused-appellant. Insisting that accused-appellant could not even identify or impute any ill-motive on the part of the buy-bust team, the OSG argues that unless there is clear and convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty, their testimonies on the operation deserve full faith and credit. Moreover, the OSG maintains that the defense of denial cannot prevail over the positive identification by PO2 Llantino of accused-appellant as the person who sold the methylamphetamine hydrochloride (shabu) to the poseur-buyer. On the contention that the confiscated item was not marked immediately after the seizure, the OSG explains that the procedure regarding the seizure and custody of confiscated items suspected to be dangerous drugs or regulated drugs is not absolute, provided that the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers.

We sustain accused-appellant's conviction.

It is but fundamental that no less than a painstaking review of the case be conducted by this Court considering that what is at stake is the liberty of accused-appellant. We, however, find no cogent reason to warrant the acquittal of accused-appellant in this case and reversal of the findings of the trial and appellate courts. The case records support the conclusion that prosecution was able to discharge its burden of establishing with moral certainty the presence of all the elements necessary for the conviction of herein accused-appellant for the illegal sale of shabu.

We discuss the arguments raised by the defense in seriatim.

This Court takes pride in upholding a most fundamental constitutional right which is the right of an accused in criminal prosecutions to be presumed innocent until proven guilty beyond reasonable doubt.[22] Thus, in order to justify the conviction of an accused, the prosecution must adduce that quantum of evidence sufficient to overcome this constitutional presumption of innocence.

It is well-established that findings of 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 trial. This rule finds an even more stringent application where said findings are sustained by the Court of Appeals as in the case at bar.[23]

In prosecutions for illegal sale of prohibited or dangerous drugs, what determines if there was a sale of dangerous drugs is proof of the concurrence of all the elements of the offense. Conviction is proper if the following elements concur:

- (1) the identity of the buyer and the seller, the object, and the consideration; and
- (2) the delivery of the thing sold and the payment therefor.[24]

What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited or regulated drug or the corpus delicti as evidence.[25]

Accused-appellant was arrested in flagrante delicto in a buy-bust operation which is a form of entrapment which in recent years has been accepted to be a valid and effective mode of apprehending drug pushers. In a buy-bust

operation, ways and means are employed for the purpose of trapping and capturing lawbreakers in the execution of their plan.[26] The idea to commit a crime originates from the offender, without anybody inducing or prodding him to commit the offense.[27] If carried out with due regard for constitutional and legal safeguards, a buy-bust operation deserves judicial sanction.

The defense stresses the fact that the trial court and the appellate court relied heavily on the testimony of a sole witness PO2 Llantino.

The non-presentation as witnesses of other persons such as the other police officers forming a buy-bust team is not a crucial point against the prosecution[28] since the matter of presentation of witnesses by the prosecution is not for the court to decide. It is the prosecution which has the discretion as to how to present its case and it has the right to choose whom it wishes to present as witnesses.[29] Moreover, the testimony of a single prosecution witness, if credible and positive and satisfies the court as to the guilt of the accused beyond reasonable doubt,[30] is enough to sustain a conviction.

Truth is established not by the quantity of witnesses but by the quality of their testimonies.[31] The testimony only needs to establish sufficiently: (1) the identity of the buyer, seller, object and consideration; and (2) the delivery of the thing sold and the payment thereof.

Being the poseur-buyer, PO2 Llantino is in the best position to testify on the transaction between him and accused-appellant concerning the sale of the dangerous drug.

As recalled by PO2 Llantino, the designated poseur-buyer, the events that led to the apprehension of accused-appellant are as follows:

Q:

Policeman Llantino, do you remember having conducted buy bust operation sometime on October 21, 2002?

A:

Yes, sir.

Q:

And what prompted you to conduct buy bust operation in that particular date?

A:

Our confidential informer personally appeared to our office, sir.

Q:

And what information did he give to your office?

A:

An information regarding the selling of shabu, sir.

Q:

By whom.

A:

Against alias Boy.

Q:

And the full name of this person was allegedly was not mentioned by the confidential informer?

A:

Yes, sir.

Q:

And what did you do after having received that information?

A:

We relayed it to our chief, sir.

Q:

What did he do?

A:

He ordered us to compose a team.

Q:

How many of you?

A:

Eight, sir.

Q:

What did you do with the preparation of the operation?

A:

Our chief designated me as the poseur buyer.

Q:

And how much money will be using to buy from the suspect?

A:

P100.00, one piece only.

Q:

You said you are supposed to act as the poseur buyer, and after having received the money, what did you do with the money?

A:

I placed markings and have it xerox (sic), sir.

Q:

Can you remember what was your marking placed on the money?

A:

It was marked AL, sir.

Q:

And what stands (sic) that for?

A:

Allan Llantino, sir.

Q:

It has no marking on the face of the money?

A:

Yes, sir.

Q:

But the serial number, was that indicated in the original?

A:

Yes, sir.

Q:

Now, how did you reach the place where the accused sell shabu?

A:

At Pitong Gatang, Dampalit, sir.

Q:

How did you reach the place?

A:

We used private vehicle, sir.

Q:

You were boarded in?

A:

Two vehicles, sir.

Q:

And when you reached the place, what did you do next?

A:

We parked our vehicle 50 meters away from the place.

Q:

Was that daytime or nighttime?

A:

Afternoon, sir.

Q:

And were you in uniform?

A:

Civilian clothes, sir.

Q:

And who went ahead of the target place?

A:

Me, sir.

Q:

What happened when you went ahead together with your confidential informer?

A:

While walking we saw alias Boy standing and then we approached him.

Q:

And what happened when you approached him?

A:

We introduced as a friend, sir.

Q:

And after the introduction, what happened next?

A:

I was asked if I will buy shabu, sir.

Q:

And what is your answer?

A:

I told him yes "piso."

Q:

What does amounts (sic) "piso"?

A:

P100.00, sir.

Q:

And how much are you expecting from alias Boy in exchange of the P100.00?

A:

One plastic sachet, sir.

Q:

Now, who gave the money to alias Boy?

A:

I handed to him the money, sir.

Q:

After you handed the money to him, what did he do next?

A:

He took from his right pocket one plastic sachet and handed to me, sir.[32]

PO2 Llantino's testimony proved all the elements of the crime. He testified vividly on the buy-bust operation. He positively identified accused-appellant as the seller of the shabu. Per Report No. D-1162-02 of Forensic Chemist Albert S. Arturo, the substance, weighing 0.25 gram, which was bought from accused-appellant in consideration of P100.00, was examined and found to be methylamphetamine hydrochloride.[33] He testified that he was the one who prepared the marked money,[34] acted as the poseur-buyer,[35] arrested the accused,[36] and turned-over the suspected shabu to the investigator.[37] PO2 Llantino testified in a frank, spontaneous, straightforward and categorical manner and his credibility was not crumpled on cross-examination by defense counsel. His testimony was able to present a complete picture detailing the buy-bust operation - from the initial contact between the designated poseur-buyer PO2 Llantino and the pusher accused-appellant, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. The shabu subject of the sale was brought to and properly identified in court.

At any rate, accused-appellant's contention that the testimony of PO2 Llantino was uncorroborated is not entirely accurate. The records indicate that the defense called one of the members of the buy-bust team, PO2 Joel Borda, to the witness stand as a hostile witness. He testified that PO2 Llantino acted as their poseur-buyer and was the one who personally arrested accused-appellant. He further narrated that he and the other members of the buy-bust team merely helped PO2 Llantino arrest appellant when he gave the pre-arranged signal.[38]

Moreover, the chain of custody is unbroken and thus the integrity and evidentiary value of the seized items have been preserved.

PO2 Llantino testified on the custody of the shabu, to wit:

Fiscal:

How about the suspected shabu, what did you do with the shabu?

A:

I turned it over to the investigator.

Fiscal:

Do you know what the investigator did to the plastic sachet of shabu?

A:

He just put his markings and he made a laboratory request.

Fiscal:

Do you know the result?

A:

Positive.[39]

The procedure to be followed in the custody and handling of seized dangerous drugs is outlined in Section 21, paragraph 1, Article II of Republic Act No. 9165 which stipulates:

(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 same is implemented by Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165, viz.:

(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. (Emphasis ours.)

The failure of the prosecution to show that the police officers conducted the required physical inventory and photograph of the evidence confiscated pursuant to said guidelines, is not fatal and does not automatically render accused-appellant's arrest illegal or the items seized/confiscated from him inadmissible. Indeed, the implementing rules offer some flexibility when a proviso added 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 same provision clearly states as well, that it must still be shown that there exists justifiable grounds and proof that the integrity and evidentiary value of the evidence have been preserved.

This Court can no longer find out what justifiable reasons existed, if any, since the defense did not raise this issue during trial.[40] Be that as it may, this Court has explained in *People v. Del Monte*[41] that what is of utmost importance is the preservation of the integrity and evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused. The existence of the dangerous drug is a condition sine qua non for conviction for the illegal sale of dangerous drugs. The dangerous drug itself constitutes the very corpus delicti of the crime and the fact of its existence is vital to a judgment of conviction.[42] Thus, it is essential that the identity of the prohibited drug be established beyond doubt. The chain of custody requirement performs the function of ensuring that the integrity and evidentiary value of the seized items are preserved, so much so that unnecessary doubts as to the identity of the evidence are removed.

To be admissible, the prosecution must show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into possession of the police officers and until it was tested in the laboratory to determine its composition[43] up to the time it was offered in evidence.

In the case at bar, the totality of the testimonial, documentary, and object evidence adequately supports not only the findings that a valid buy-bust operation took place but accounted for an unbroken chain of custody of the seized evidence as well.

A certified true photocopy of the NPDO-DDEG logbook indicated that a team was officially dispatched at 4:00 o'clock in the afternoon for a buy-bust operation at Pitong Gatang, Dampalit, in Malabon City, and brought with them one (1) piece of one hundred peso bill with Serial Number HL 034748 to be used as buy-bust money.[44] The testimony of PO2 Llantino established that the buy-bust operation occurred between 4:00 o'clock to 5:30 o'clock in the afternoon of 21 October 2002. Accused-appellant was brought to the Larangay police station at around 7:00 o'clock in the evening.[45] PO2 Llantino testified that the seized evidence was turned over to the police investigator[46] who put his markings "ERC-BB." DDEG Chief Reynaldo Orante made the request for laboratory examination dated 21 October 2002.[47] The request, together with the seized item (one sachet) was brought to the NPDO-CLO at 11:30 o'clock in the evening that same night and received by Forensic Chemist Albert S. Arturo at 11:35 o'clock in the evening.[48] The parties stipulated on the qualification and competence of the Forensic Chemist of the PNP Crime Laboratory. It was stipulated that the Forensic Chemist was the one who prepared the report on the examination of the specimen submitted and that he can identify the specimen.[49] While the Court notes that there is a slight discrepancy in the Serial Numbers of the buy-bust money as stated in the affidavit[50] of PO2 Llantino vis-a-vis the Serial Numbers reflected in the NPDO-DDEG Police Blotter[51] and the actual[52] buy-bust money presented. This minor inconsistency does not detract from the veracity and weight of the prosecution evidence. It is enough that the prosecution proved that money was paid to accused-appellant in consideration of which he sold and delivered the shabu. Moreover, any discrepancy on the the buy-bust money was resolved on the categorical statement of PO2 Llantino that he put the markings AL on the buy-bust money, corresponding to his initials Allan Llantino.

Thus, beyond his bare allegations, accused-appellant has not shown any evidence that will destroy the identity of the sachet.

Accused-appellant's allegation that he is a victim of a frame-up, which has been held as a shop-worn defense of those accused in drug-related cases, is viewed by the Court with disfavor. Like the defense of alibi, frame-up is an allegation that can easily be concocted.[53] For this claim to prosper, the defense must adduce clear and convincing evidence, which accused-appellant failed to do. He did not adduce any evidence showing that the police officers were maliciously motivated. His admission that he had not met nor encountered any of the police officers involved in the buy-bust operation prior to his arrest further bolsters the absence of such motive. Moreover, he testified that he could not think of any reason why the police officers would falsely impute such a serious crime against him.

Absent any proof of motive to falsely accused him of such a grave offense, the presumption of regularity in the performance of official duty and the findings of the trial court with respect to the credibility of witnesses shall prevail over accused-appellant's bare allegation that he is a victim of frame-up.[54]

The categorical and convincing testimonies of the policemen, backed up by physical evidence, overcome the unsubstantiated claim of ill-motive by appellant.

Accused-appellant's guilt having been established beyond reasonable doubt, the presumption of innocence in his favor is overturned.

Under Republic Act No. 9165, the unauthorized sale of shabu carries with it 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).

Pursuant to the enactment of Republic Act No. 9346 entitled, "An Act Prohibiting the Imposition of Death Penalty in the Philippines," only life imprisonment and fine, instead of death, shall be imposed.

The penalty imposed by the trial court, as affirmed by the Court of Appeals - life imprisonment and a fine of P500,000.00 - is proper.

WHEREFORE, premises considered, the Court of Appeals Decision dated 27 November 2007 in CA-G.R. CR H.C. No. 02175 affirming the Decision promulgated on 2 April 2004 by the Regional Trial Court of Malabon City, Branch 72, in Criminal Case No. 27778-MN, finding accused-appellant Emilio Rivera y Cablang alias 'Boy' guilty beyond reasonable doubt of violating Section 5 of the Dangerous Drugs Act of 2002, and imposing upon him the penalty of life imprisonment and a fine of P500,000.00, is hereby AFFIRMED.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Nachura, and Reyes, JJ., concur.

[1] Penned by Associate Justice Martin S. Villarama, Jr. with Associate Justices Noel G. Tijam and Sesinando E. Villon, concurring; CA rollo, pp. 98-110.

[2] Penned by Judge Benjamin M. Aquino, Jr.; id. at 60-65.

[3] SECTION 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. [emphasis ours]

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 precursor and essential chemicals trade, the maximum penalty shall be imposed in every case.

If the victim of the offense is a minor or 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.

[4] Rollo, p. 7.

[5] Records, p. 9.

[6] Id. at 3.

[7] TSN, 17 November 2003, p. 3.

[8] Records, p. 47.

[9] Id.

[10] Id. at 8; Photocopy of the buy-bust money and the NPDO-DDEG Police Blotter show HL 034748, while PO2 Llantino's affidavit states LS 034748.

[11] Id. at 47; Prepared by the Chief of the DDEG NPD Police Superintendent Reynaldo B. Orante.

[12] Id. at 46.

[13] CA rollo, pp. 60-65.

[14] Records, p. 92.

[15] CA rollo, p. 109.

[16] Id. at 111; Pursuant to Section 13, Rule 124 of the Revised Rules on Criminal Procedure, as amended by A.M. No. 00-5-03-SC.

[17] Rollo, p. 21.

[18] CA rollo, pp. 49-59.

[19] Id. at 76-91.

[20] Id. at 51.

[21] (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.

[22] Section 14(2), Article III of the Constitution.

[23] Yulo v. People, G.R. No. 142762, 4 March 2005, 452 SCRA 705, 713.

[24] People v. De Guzman, G.R. No. 177569, 28 November 2007, 539 SCRA 306, 316-317.

[25] Id.

[26] *People v. Julian-Fernandez*, 423 Phil. 895, 911 (2001).

[27] *People v. Valencia*, 439 Phil. 561, 574 (2002); *People v. Ong*, G.R. No. 137348, 21 June 2004, 432 SCRA 470, 484.

[28] *People v. Zeng Hua Dian*, G. R. No. 145348, 14 June 2004, 432 SCRA 25, 32.

[29] Id.

[30] *People v. Añonuevo*, 330 Phil. 553, 568 (1996).

[31] *People v. Manalo*, G.R. No. 107329, 24 January 1994, 229 SCRA 479, 486.

[32] TSN, 17 October 2003, pp. 4-9.

[33] Records, p. 46.

[34] TSN, 17 October 2003, p. 6.

[35] Id. at 8.

[36] TSN, 17 November 2003, p. 2.

[37] Id. at 3.

[38] TSN, 8 January 2004, pp. 2-3.

[39] TSN, 17 November 2003, p. 3.

[40] *People v. Sta. Maria*, G.R. No. 171019, 23 February 2007, 516 SCRA 621, 633-634.

[41] G.R. No. 179940, 23 April 2008.

[42] *People v. Mendiola*, G.R. No. 110778, 4 August 1994, 235 SCRA 116, 120.

[43] *Graham v. State*, 255 N. E2d 652, 655.

[44] Records, p. 45.

[45] Id.

[46] TSN, 17 November 2003, p. 3.

[47] Records, p. 47.

[48] Id.

[49] TSN, 21 November 2003, pp. 1-2.

[50] Serial Number LS 034748; Records, p. 3.

[51] Id. at 45.

[52] Serial Number HL 034748; id. at 8.

[53] *People v. De Leon*, 440 Phil. 368, 388 (2002); *People v. Lee Hoi Ming*, 459 Phil. 187, 195 (2003).

[54] *People v. De Guzman*, G.R. No. 177569, 28 November 2007, 539 SCRA 306, 318.

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