

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SPO3 SANGKI ARA Y MIRASOL, MIKE TALIB Y MAMA, AND JORDAN MUSA Y BAYAN, ACCUSED-APPELLANTS.

G.R. No. 185011. December 23, 2009

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

This is an appeal from the December 13, 2007 Decision of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00025B entitled *People of the Philippines v. SPO3 Sangki Ara y Mirasol, Mike Talib y Mama, Jordan Musa y Bayan*, which affirmed the Decision of the Regional Trial Court (RTC), Branch 9 in Davao City, convicting accused-appellants of violation of Republic Act No. (RA) 9165 or the Comprehensive Dangerous Drugs Act of 2002.

The Facts

Three Informations charged accused-appellants Sangki Ara, Mike Talib, and Jordan Musa, as follows:

Criminal Case No. 51,471-2002 against Ara

That on or about December 20, 2002, in the City of Davao, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, willfully, unlawfully and consciously traded, transported and delivered 26.6563 grams of Methamphetamine Hydrochloride or "shabu," which is a dangerous drug, with the aggravating circumstance of trading, transporting and delivering said 26.6563 grams of "shabu" within 100 meters from [the] school St. Peter's College of Toril, Davao City.

CONTRARY TO LAW.[1]

Criminal Case No. 51,472-2002 against Talib

That on or about December 20, 2002, in the City of Davao, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, willfully, unlawfully and consciously had in his possession and control one (1) plastic sachet of Methamphetamine Hydrochloride or "shabu," weighing 0.3559 gram, which is a dangerous drug.

CONTRARY TO LAW.[2]

Criminal Case No. 51,473-2002 against Musa

That on or about December 20, 2002, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, without being authorized by law, willfully, unlawfully and consciously had in his possession and control five (5) big plastic sachet[s] of Methamphetamine Hydrochloride or "shabu" weighing 14.2936 grams, which is a dangerous drug.

CONTRARY TO LAW.[3]

During their arraignment, accused-appellants all gave a "not guilty" plea.

Version of the Prosecution

At the trial, the prosecution presented the following witnesses: Forensic Chemist Noemi Austero, PO2 Ronald Lao, SPO1 Bienvenido Furog, PO1 Enrique Ayao, Jr., SPO4 Rodrigo Mallorca, and PO2 Jacy Jay Francia.

In the morning of December 20, 2002, a confidential informant (CI) came to the Heinous Crime Investigation Section (HCIS) of the Davao City Police Department and reported that three (3) suspected drug pushers had contacted him for a deal involving six (6) plastic sachets of shabu. He was instructed to go that same morning to St. Peter's College at Toril, Davao City and look for an orange Nissan Sentra car.[4]

Police Chief Inspector Fulgencio Pavo, Sr. immediately formed a buy-bust team composed of SPO3 Reynaldo Capute, SPO4 Mario Galendez, SPO3 Antonio Balolong, SPO2 Arturo Lascaños, SPO2 Jim Tan, SPO1 Rizalino Aquino, SPO1 Bienvenido Furog, PO2 Vivencio Jumawan, Jr., PO2 Ronald Lao, and PO1 Enrique Ayao, Jr., who would act as poseur-buyer.[5]

The team proceeded to the school where PO1 Ayao and the CI waited by the gate. At around 8:45 a.m., an orange Nissan Sentra bearing plate number UGR 510 stopped in front of them. The two men approached the vehicle and the CI talked briefly with an old man in the front seat. PO1 Ayao was then told to get in the back seat as accused-appellant Mike Talib opened the door. The old man, later identified as accused-appellant SPO3 Ara, asked PO1 Ayao if he had the money and the latter replied in the positive. Ara took out several sachets with crystalline granules from his pocket and handed them to PO1 Ayao, who thereupon gave the pre-arranged signal of opening the car door. The driver of the car, later identified as accused-appellant Jordan Musa, tried to drive away but PO1 Ayao was able to switch off the car engine in time. The back-up team appeared and SPO1 Furog held on to Musa while PO2 Lao restrained Talib. PO1 Ayao then asked Ara to get out of the vehicle.[6]

Recovered from the group were plastic sachets of white crystalline substance: six (6) big sachets, weighing 26.6563 grams, from Ara by PO1 Ayao; five (5) big sachets, weighing 14.2936 grams, from Musa by SPO1 Furog; and a small sachet, weighing 0.3559 gram, from Talib by PO2 Lao.[7]

The three suspects were brought to the HCIS and the seized items indorsed to the Philippine National Police (PNP) Crime Laboratory for examination. Forensic Chemist Austero, who conducted the examination, found that the confiscated sachets all tested positive for shabu.[8]

Version of the Defense

The defense offered the sole testimony of Ara, who said that he had been a member of the PNP for 32 years, with a spotless record. On December 20, 2002, SPO3 Ara was in Cotabato City, at the house of his daughter Marilyn, wife of his co-accused Musa. He was set to go that day to the Ombudsman's Davao City office for some paperwork in preparation for his retirement on July 8, 2003. He recounted expecting at least PhP 1.6 million in retirement benefits.[9] Early that morning, past three o'clock, he and Musa headed for Davao City on board the latter's car. As he was feeling weak, Ara slept in the back seat.

Upon reaching Davao City, he was surprised to see another man, Mike Talib, in the front seat of the car when he woke up. Musa explained that Talib had hitched a ride on a bridge they had passed.[10]

When they arrived in Toril, Ara noticed the car to be overheating, so they stopped. Ara did not know that they were near St. Peter's College since he was not familiar with the area. Talib alighted from the car and Ara transferred to the front seat. While Talib was getting into the back seat, PO1 Ayao came out of nowhere, pointed his .45 caliber pistol at Ara even if he was not doing anything, and ordered him to get off the vehicle. He saw that

guns were also pointed at his companions. As the group were being arrested, he told PO1 Ayao that he was also a police officer. Ara insisted that he was not holding anything and that the shabu taken from him was planted. He asserted that the only time he saw shabu was on television.[11]

The Ruling of the Trial Court

The RTC pronounced accused-appellants guilty of the crimes charged. In its Decision dated March 1, 2003, the trial court held that the prosecution was able to establish the quantum of proof showing the guilt of accused-appellants beyond reasonable doubt. It further ruled that the "intercept operation" conducted by the buy-bust team was valid.

The dispositive portion of the RTC Decision reads:

WHEREFORE, premised on the foregoing the Court finds the following:

In Criminal Case No. 51,471-2002, the accused herein SANGKI ARA Y MASOL, Filipino, 55 years old, widower, a resident of Kabuntalan, Cotabato City, is hereby found GUILTY beyond reasonable doubt, and is CONVICTED of the crime of violation of Sec. 5, 1st paragraph of Republic Act 9165. He is hereby imposed the DEATH PENALTY and FINE of TEN MILLION PESOS (PhP 10,000,000) with all the accessory penalties corresponding thereto, including absolute perpetual disqualification from any public office, in view of the provision of section 28 of RA 9165 quoted above.

Since the prosecution proved beyond reasonable doubt that the crime was committed in the area which is only five (5) to six (6) meters away from the school, the provision of section 5 paragraph 3 Article II of RA 9165 was applied in the imposition of the maximum penalty against the herein accused.

In Criminal Case No. 51,472-2002, the accused herein MIKE TALIB y MAMA, Filipino, of legal age, single and a resident of Parang, Cotabato, is found GUILTY beyond reasonable doubt, and is CONVICTED of the crime of violation of Sec. 11, 3rd paragraph, Article II of Republic Act 9165. He is hereby imposed a penalty of Imprisonment of SIXTEEN (16) YEARS and a fine of THREE HUNDRED THOUSAND PESOS (PhP 300,000) with all the accessory penalties corresponding thereto.

In Criminal Case No. 51,473-2002 the accused herein JORDAN MUSA Y BAYAN, Filipino, 30 years old, married and a resident of Cotabato City, is hereby found GUILTY beyond reasonable doubt and is CONVICTED of the crime for Violation of Sec. 11, 1st paragraph, Article II of Republic Act No. 9165. He is hereby sentenced to suffer a penalty of LIFE IMPRISONMENT and FINE of FOUR HUNDRED THOUSAND PESOS (PhP 400,000) with all the accessory penalties corresponding thereto.

SO ORDERED.[12]

As the death penalty was imposed on Ara, the case went on automatic review before this Court. Conformably with *People v. Mateo*,[13] we, however, ordered the transfer of the case to the CA.

The Ruling of the Appellate Court

Contesting the RTC Decision, accused-appellants filed separate appeals before the CA. Talib claimed that it was erroneous for the trial court to have used the complaining witnesses' affidavits as basis for ruling that their arrest was valid. He also cited as erroneous the trial court's refusal to rule that the prosecution's evidence was inadmissible. Lastly, he questioned the failure of the buy-bust team to follow the requirements of RA 9165 on proper inventory of seized drugs.

Ara and Musa filed a joint brief, alleging the following: (1) the trial court erred in denying the Motion to Suppress and/or exclude illegally obtained evidence; (2) the trial court erred in denying the Demurrer to Evidence; (3) the

trial court failed to consider that the criminal informations did not allege conspiracy among the accused; and (4) the trial court erred in ruling that the "intercept operation" was valid.

The CA affirmed the trial court's decision with some modifications on the penalty imposed. It ruled that a majority of the errors raised in the appeal referred to technicalities in the conduct of buy-bust operations that did not invalidate the police officers' actions. On the issue of the evidence presented, the CA held that the presumption that police officers performed their duties in a regular manner was not overturned.

The appellate court resolved the issue of the validity of the buy-bust operation by stating that the law requires no specific method of conducting such an operation. It ruled that to require a warrant of arrest would not accomplish the goal of apprehending drug pushers in flagrante delicto. The CA's Decision emphasized that all the elements necessary for the prosecution of illegal sale of drugs were established.

The fallo of the December 13, 2007 CA Decision reads:

WHEREFORE, premises foregoing, the appeal is hereby DISMISSED and the appealed March 1, 2003 Decision is hereby AFFIRMED subject to the modification insofar as the death penalty imposed upon accused SPO3 Sangki Ara is concerned. Accordingly, his penalty is hereby reduced to life imprisonment pursuant to Republic Act No. 9346.

SO ORDERED.[14]

On December 17, 2008, this Court required the parties to submit supplemental briefs if they so desired. The parties, save for Musa, manifested their willingness to forego the filing of additional briefs.

The Issues

Reiterating the matters raised before the CA, accused-appellants alleged the following:

I

Whether the Court of Appeals erred in holding that the arrest of the accused-appellants was valid based on the affidavits of the complaining witnesses

II

Whether the Court of Appeals erred in disregarding the apparent defects and inconsistencies in the affidavits of the complaining witnesses

III

Whether the Court of Appeals erred in refusing to consider the suppression or exclusion of evidence

IV

Whether the Court of Appeals erred in not holding that the prosecution miserably failed to prove the guilt of the accused beyond reasonable doubt

Talib also raises the following grounds for his acquittal:

I

Whether the arrest of Talib was illegal and the evidence confiscated from him illegally obtained

II

Whether the police officers who conducted the illegal search and arrest also deliberately failed and/or violated

the provisions of RA 9165

III

Whether the testimonies of the prosecution's witnesses and their respective affidavits were gravely inconsistent

Ara and Musa additionally raise the following issues:

I

Whether the trial court erred in denying the Demurrer to Evidence

II

Whether the trial court failed to consider that the criminal informations did not allege conspiracy among the accused

III

Whether the trial court erred in ruling that the "intercept operation" was valid

Accused-appellant Musa also avers that the CA erred in convicting him since the prosecution failed to prove the corpus delicti of the offense charged.

The Ruling of this Court

What are mainly raised in this appeal are (1) whether the buy-bust conducted was valid; (2) whether the crimes of illegal sale and illegal possession of drugs were sufficiently established; and (3) whether the chain of custody over the shabu was unbroken.

Warrantless Arrest and Seizure Valid

In calling for their acquittal, accused-appellants decry their arrest without probable cause and the violation of their constitutional rights. They claim that the buy-bust team had more than a month to apply for an arrest warrant yet failed to do so.

Owing to the special circumstances surrounding the drug trade, a buy-bust operation has long been held as a legitimate method of catching offenders. It is a form of entrapment employed as an effective way of apprehending a criminal in the act of commission of an offense.[15] We have ruled that a buy-bust operation can be carried out after a long period of planning. The period of planning for such operation cannot be dictated to the police authorities who are to undertake such operation.[16] It is unavailing then to argue that the operatives had to first secure a warrant of arrest given that the objective of the operation was to apprehend the accused-appellants in flagrante delicto. In fact, one of the situations covered by a lawful warrantless arrest under Section 5(a), Rule 113 of the Rules of Court is when a person has committed, is actually committing, or is attempting to commit an offense in the presence of a peace officer or private person.

It is erroneous as well to argue that there was no probable cause to arrest accused-appellants. Probable cause, in warrantless searches, must only be based on reasonable ground of suspicion or belief that a crime has been committed or is about to be committed. There is no hard and fast rule or fixed formula for determining probable cause, for its determination varies according to the facts of each case.[17] Probable cause was provided by information gathered from the CI and from accused-appellants themselves when they instructed PO1 Ayao to enter their vehicle and begin the transaction. The illegal sale of shabu inside accused-appellants' vehicle was afterwards clearly established. Thus, as we have previously held, the arresting officers were justified in making the arrests as accused-appellants had just committed a crime when Ara sold shabu to PO1 Ayao.[18] Talib and

Musa were also frisked for contraband as it may be logically inferred that they were also part of Ara's drug activities inside the vehicle. This inference was further strengthened by Musa's attempt to drive the vehicle away and elude arrest.

Moreover, the trial court correctly denied the Motion to Suppress or Exclude Evidence. We need not reiterate that the evidence was not excluded since the buy-bust operation was shown to be a legitimate form of entrapment. The pieces of evidence thus seized therein were admissible. As the appellate court noted, it was within legal bounds and no anomaly was found in the conduct of the buy-bust operation. There is, therefore, no basis for the assertion that the trial court's order denying said motion was biased and committed with grave abuse of discretion.

Prosecution Established Guilt Beyond Reasonable Doubt

For the successful prosecution of the illegal sale of shabu, the following elements must be established: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and its payment. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the corpus delicti as evidence.[19] All these requisites were met by the prosecution.

In contrast, Ara, the sole defense witness, could only proffer the weak defenses of denial and alibi. He expressed surprise at having Talib in his car and claimed he was framed and that the shabu confiscated from him was planted. According to the trial court, however, Ara's lying on the witness stand "was so intense as he tried very hard in vain to win the Court's sympathy." [20]

Given the prosecution's evidence, we rule that the presumption of regularity in the performance of official duties has not been overturned. The presumption remains because the defense failed to present clear and convincing evidence that the police officers did not properly perform their duty or that they were inspired by an improper motive.[21] Ara could not explain why his fellow police officers, who did not know him prior to his arrest, would frame him for such a serious offense.

Validity of Buy-Bust Operation

Likewise questioned by the defense in the affidavits of the police officers was the allegation that there was a legitimate buy-bust operation. No marked money was presented to back up the police officers' claims. This argument lacks basis, however. There are requirements that must be complied with in proving the legitimacy of drug buy-bust operations. Nevertheless, this Court has ruled that presentation of the marked money used is not such a requirement. In the prosecution for the sale of dangerous drugs, the absence of marked money does not create a hiatus in the evidence for the prosecution, as long as the sale of dangerous drugs is adequately proved and the drug subject of the transaction is presented before the court.[22] In the instant case, the police officers' testimonies adequately established the illegal sale of shabu. The shabu was then presented before the trial court. The non-presentation of the marked money may, thus, be overlooked as a peripheral matter.

Talib further contends that it is incredible that a shabu transaction would be carried out in a very open and public place. Contrary to Talib's claim, however, judicial experience has shown that drug transactions have been conducted without much care for an inconspicuous location.

Thus, we observed in *People v. Roldan*:

Drug pushing when done on a small level x x x belongs to that class of crimes that may be committed at anytime and at any place. After the offer to buy is accepted and the exchange is made, the illegal transaction is completed in a few minutes. The fact that the parties are in a public place and in the presence of other people may not always discourage them from pursuing their illegal trade these factors may even serve to camouflage the same. Hence, the Court has sustained the conviction of drug pushers caught selling illegal drugs in a

billiard hall, in front of a store, along a street at 1:45 p.m., and in front of a house.[23]

It is also argued as impossible to believe that even if there was already a deal between the informant and accused-appellants, it was the apprehending police officer who acted as the buyer and that he requested to see the shabu first before showing the money. These claims by Talib are similarly undeserving of consideration. First, there is no uniform method by which drug pushers and their buyers operate. Second, the choice of effective ways to apprehend drug dealers is within the ambit of police authority. Police officers have the expertise to determine which specific approaches are necessary to enforce their entrapment operations.[24] Third, as long as they enjoy credibility as witnesses, the police officers' account of how the buy-bust operation transpired is entitled to full faith and credit. [25] Lastly, these arguments are merely incidental and do not affect the elements of the crime which have been, in the instant case, sufficiently established.

Talib also alleges that during his testimony, SPO1 Furog was not certain as to the reason he was apprehending Musa. Another claim is that SPO1 Furog, when examined by the prosecutor and two different defense lawyers, allegedly made relevant inconsistencies in his testimony. The pertinent exchange reads:

Direct Examination of SPO1 Furog:

Prosecutor Weis:

Q What was your basis for stopping [Musa] from letting the car go?

A I made him [stop] the car[.] [W]e [had] to check them first because I think Ayao saw [that] Ara [had] the suspected shabu.

Cross-Examination of SPO1 Furog:

Atty. Estrada

Q When you arrested Musa as you said, it was because he attempted to drive the car away, that was it?

A The most, when SPO3 Sangki Ara told us that he was a PNP member and when we saw the substances from the two of them first.

x x x x

Q You are referring to Musa and Ara?

A Yes sir.[26]

x x x x

Atty. Javines

Q Ayao did not arrest [Ara] inside the vehicle?

A Only I rushed to the vehicle. I don't know if he directly arrested him when he saw the substance and [got] out of the vehicle but I saw him get out from the vehicle.[27]

The alleged inconsistencies in SPO1 Furog's "reason for apprehending Musa" are, however, insignificant and do not merit much consideration as well. The questioned parts in the testimony of SPO1 Furog do not dent the totality of evidence against accused-appellants. To repeat, the elements of the crime of illegal sale of drugs and illegal possession of drugs were both sufficiently established. Although SPO1 Furog was not categorical in explaining his basis for apprehending Musa, the arrest of the latter must be considered as part of a legitimate buy-bust operation which was consummated. Musa's arrest came after the pre-arranged signal was given to the

back-up team and this served as basis for the police officers to apprehend all those in the vehicle, including Musa.

Denial of Demurrer to Evidence

Although alleged by accused-appellants Ara and Musa, no reason was given in the appeal as to why the trial court erred in denying their Demurrer to Evidence. Whatever their basis may be, an action on a demurrer or on a motion to dismiss rests on the sound exercise of judicial discretion.[28] In *Gutib v. CA*,[29] we explained that:

A demurrer to evidence is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or to support a verdict of guilt.

Here, the trial court found competent and sufficient evidence to support a conviction of all three accused-appellants. We see no reason to overturn the trial court's finding.

Allegation of Conspiracy in Information Not Necessary

We find no merit in accused-appellants' insistence that conspiracy should have been alleged in the separate Informations indicting them. We agree with the appellate court, which succinctly stated that conspiracy was not alleged "precisely because they were charged with different offenses for the distinct acts that each of them committed. One's possession of an illegal drug does not need to be conspired by another who, on his part, also possessed an illegal drug." [30] The three separate indictments against Ara, Musa, and Talib do not need to allege conspiracy, for the act of conspiring and all the elements of the crime must be set forth in the complaint or information only when conspiracy is charged as a crime.[31]

Requirements of RA 9165 on Proper Inventory

Musa contends that since the markings on the seized items were only made at the police station, there is a great possibility that these were replaced. The result, he argues, would be a lack of guarantee that what were inventoried and photographed at the crime laboratory were the same specimens confiscated from the accused.

As recently highlighted in *People v. Cortez*[32] and *People v. Lazaro, Jr.*,[33] RA 9165 and its subsequent Implementing Rules and Regulations (IRR) do not require strict compliance as to the chain of custody rule. The arrest of an accused will not be invalidated and the items seized from him rendered inadmissible on the sole ground of non-compliance with Sec. 21, Article II of RA 9165. We have emphasized that what is essential 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."

Briefly stated, non-compliance with the procedural requirements under RA 9165 and its IRR relative to the custody, photographing, and drug-testing of the apprehended persons, is not a serious flaw that can render void the seizures and custody of drugs in a buy-bust operation.[34]

The chain of custody in the instant case did not suffer from serious flaws as accused-appellants argue. The recovery and handling of the seized drugs showed that, as to Ara, first, PO1 Ayao recovered six plastic sachets of white crystalline substance from Ara and marked them with both his and Ara's initials. Second, the sachets were likewise signed by property custodian PO3 Pelenio. Third, PO1 Ayao signed a Request for Laboratory Examination then personally delivered the sachets to the PNP Crime Laboratory for examination. Fourth, SPO4 Mallorca then received the sachets at the crime laboratory.

As to Musa, first, SPO1 Furog seized the sachets from Musa and marked each with his own initials. Second, an

Inventory of Property Seized was then made by SPO4 Galendez. Lastly, SPO1 Furog later submitted a Request for Laboratory Examination of the five (5) sachets weighing a total of 14.2936 grams to the PNP Crime Laboratory.

As to Talib, first, PO2 Lao seized a small sachet from Talib during the buy-bust operation. Second, PO2 Lao delivered a Request for Laboratory Examination of one (1) sachet of suspected shabu weighing 0.3559 gram. Third, SPO4 Mallorca also received the items at the PNP Crime Laboratory.

Forensic Chemist Noemi Austero's examination of the sachets confiscated from all accused-appellants showed that these were positive for shabu. During trial, the seized items were identified in court. The five (5) sachets taken from Musa were marked Exhibits "A-1" to "A-5," while the sachet seized from Talib was marked Exhibit "B." The six (6) sachets taken from Ara were marked Exhibits "B1-B6."

We are, thus, satisfied that the prosecution was able to preserve the integrity and evidentiary value of the shabu in all three criminal cases against accused-appellants.

The rest of the arguments interposed are evidently without merit and do not warrant discussion.

Penalties Imposed

Criminal Case No. 51,472-2002 against Talib

The crime of illegal possession of drugs is punishable by Sec. 11 of RA 9165, as follows:

Sec. 11. Possession of Dangerous Drugs. - x x x

x x x x

3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of x x x methamphetamine hydrochloride x x x.

Talib was sentenced to imprisonment of sixteen (16) years and a fine of PhP 300,000.

Criminal Case No. 51,473-2002 against Musa

The provision Musa was charged of violating provides the following penalty:

(1) Life imprisonment and a fine ranging from Four hundred thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the quantity of methamphetamine hydrochloride or "shabu" is ten (10) grams or more but less than fifty (50) grams;

Musa was sentenced to life imprisonment and a fine of PhP 400,000.

Criminal Case No. 51,471-2002 against Ara

The crime of illegal sale of shabu is penalized by Sec. 5, Art. 11 of RA 9165:

SEC. 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. - The penalty of life imprisonment to death and a fine ranging from Five Hundred Thousand Pesos (P500,000.00) to Ten Million Pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

The same section contains the following provision:

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.

Since the sale of shabu was within five (5) to six (6) meters from St. Peter's College, the maximum penalty of death should be imposed on Ara. Pursuant to RA 9346 or "An Act Prohibiting the Imposition of Death Penalty in the Philippines," however, only life imprisonment and a fine shall be meted on him.

Ara was sentenced to life imprisonment and a fine of PhP 10,000,000. He, however, is no longer eligible for parole.

What distinguishes this case from others is that one of the accused-appellants was a police officer himself who should have known better than to break the law he was duty-bound to enforce. What is more, he is charged with the crime of selling illegal drugs, an offense so horrendous for destroying the lives of its victims and their families that the penalty of death used to be imposed on its perpetrators. No one could have been more deserving of such a punishment than someone who should be enforcing the law but caught pushing drugs instead. As it was, the death penalty was indeed originally imposed on SPO3 Ara, who had been in the service for more than 30 years.

The ill effects of the use of illegal drugs are too repulsive and shocking to enumerate. Thus, once the charges of sale and possession of said drugs are established in cases such as this, any errors or technicalities raised by the suspects should not be allowed to invalidate the actions of those involved in curtailing their illegal activities. The punishments given to drug pushers should serve as deterrent for others not to commit the same offense. No price seems high enough for drug dealers to pay; it is just unfortunate that the penalty of death can no longer be imposed because it has been abolished.

As the penalties meted out to all three accused-appellants are within the range provided by RA 9165, we affirm the CA's sentence.

WHEREFORE, the appeal is DENIED. The CA Decision in CA-G.R. CR-H.C. No. 00025B entitled People of the Philippines v. SPO3 Sangki Ara y Mirasol, Mike Talib y Mama, Jordan Musa y Bayan is AFFIRMED with the modification that accused-appellant Sangki Ara is not eligible for parole.

SO ORDERED.

Corona, (Chairperson), Nachura, Peralta, and Del Castillo,[*] JJ., concur.

[*] Additional member per Special Order No. 805 dated December 4, 2009.

[1] CA rollo, p. 34.

[2] Id. at 34-35.

[3] Id. at 35.

[4] Rollo, p. 7.

[5] Id.

[6] Id. at 8-9.

[7] Id. at 9.

- [8] Id. at 9-10.
- [9] Id. at 11.
- [10] Id. at 12.
- [11] Id. at 13.
- [12] CA rollo, pp. 45-46.
- [13] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.
- [14] Rollo, p. 32. The Decision was penned by Associate Justice Rodrigo F. Lim, Jr., with Associate Justices Teresita Dy-Liacco Flores and Michael P. Elbinias, concurring.
- [15] *People v. Encila*, G.R. No. 182419, February 10, 2009.
- [16] *Quinicot v. People*, G. R. No. 179700, June 22, 2009.
- [17] *Epie, Jr. v. Ulat-Marredo*, G.R. No. 148117, March 22, 2007, 518 SCRA 641, 647.
- [18] *People v. Lopez*, G.R No. 181441, November 14, 2008.
- [19] *Cruz v. People*, G.R. No. 164580, February 6, 2009.
- [20] CA rollo, p.43.
- [21] *People v. Concepcion*, G.R. No. 178876, June 27, 2008.
- [22] *Cruz v. People*, supra note 19.
- [23] G.R. No. 98398, July 6, 1993, 224 SCRA 536, 548; citing *People v. Paco*, G.R. No. 76893, February 27, 1989, 170 SCRA 681 (other citations omitted).
- [24] *People v. Lim*, G.R. No. 187503, September 11, 2009.
- [25] Unless there is a clear and convincing evidence that the members of the buy-bust team were impelled by any improper motive, or were not properly performing their duties, their testimonies on the operation deserve full faith and credit. *Chan v. Secretary of Justice*, G.R. No. 147065, March 14, 2008.
- [26] TSN, February 5, 2003, p. 18.
- [27] Id. at 28.
- [28] *Nicolas v. Sandiganbayan*, G.R. Nos. 175930-31, February 11, 2008.
- [29] G.R. No. 131209, August 13, 1999, 312 SCRA 365.
- [30] Rollo, p. 30.
- [31] *Lazarte v. Sandiganbayan*, G.R. No. 180122, March 13, 2009.
- [32] G.R. No. 183819, July 23, 2009.
- [33] G.R. No. 186418, October 16, 2009.
- [34] *People v. Daria*, G.R. No. 186138, September 11, 2009.

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