

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALLEN UDTOJAN MANTALABA, ACCUSED-APPELLANT.

G.R. No. 186227. July 20, 2011

Ponente: PERALTA, J.

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PERALTA, J.:

For this Court's consideration is the Decision [1] dated July 31, 2008 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00240-MIN, affirming the Omnibus Judgment [2] dated September 14, 2005, of the Regional Trial Court, Branch 1, Butuan City in Criminal Case No. 10250 and Criminal Case No. 10251, finding appellant Allen Udtojan Mantalaba, guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of Republic Act (RA) 9165.

The facts, as culled from the records, are the following:

The Task Force Regional Anti-Crime Emergency Response (RACER) in Butuan City received a report from an informer that a certain Allen Mantalaba, who was seventeen (17) years old at the time, was selling shabu at Purok 4, Barangay 3, Agao District, Butuan City. Thus, a buy-bust team was organized, composed of PO1 Randy Pajo, PO1 Eric Simon and two (2) poseur-buyers who were provided with two (2) pieces of P100 marked bills to be used in the purchase.

Around 7 o'clock in the evening of October 1, 2003, the team, armed with the marked money, proceeded to Purok 4, Barangay 3, Agao District, Butuan City for the buy-bust operation. The two poseur-buyers approached Allen who was sitting at a corner and said to be in the act of selling shabu. PO1 Pajo saw the poseur-buyers and appellant talking to each other. Afterwards, the appellant handed a sachet of shabu to one of the poseur-buyers and the latter gave the marked money to the appellant. The poseur-buyers went back to the police officers and told them that the transaction has been completed. Police officers Pajo and Simon rushed to the place and handcuffed the appellant as he was leaving the place.

The police officers, still in the area of operation and in the presence of barangay officials Richard S. Tandoy and Gresilda B. Tumala, searched the appellant and found a big sachet of shabu. PO1 Simon also pointed to the barangay officials the marked money, two pieces of P100 bill, thrown by the appellant on the ground.

After the operation, and in the presence of the same barangay officials, the police officers made an inventory of the items recovered from the appellant which are: (1) one big sachet of shabu which they marked as RMP-1-10-01-03; (2) one small sachet of shabu which they marked as RMP 2-10-01-03; and (3) two (2) pieces of one hundred pesos marked money and a fifty peso (P50) bill. Thereafter, a letter-request was prepared by Inspector Ferdinand B. Dacillo for the laboratory examination of the two (2) sachets containing a crystalline substance, ultra-violet examination on the person of the appellant as well as the two (2) pieces of one hundred pesos marked money. The request was brought by PO1 Pajo and personally received by Police Inspector Virginia Sison-Gucor, Forensic Chemical Officer of the Regional Crime Laboratory Office XII Butuan City, who immediately conducted the examination. The laboratory examination revealed that the appellant tested positive for

the presence of bright orange ultra-violet fluorescent powder; and the crystalline substance contained in two sachets, separately marked as RMP-1-10-01-03 and RMP-2-10-01-03, were positively identified as methamphetamine hydrochloride.

Thereafter, two separate Informations were filed before the RTC of Butuan City against appellant for violation of Sections 5 and 11 of RA 9165, stating the following:

Criminal Case No. 10250

That on or about the evening of October 1, 2003 at Purok 4, Barangay 3, Agao, Butuan City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully, and feloniously sell zero point zero four one two (0.0412) grams of methamphetamine hydrochloride, otherwise known as shabu which is a dangerous drug.

CONTRARY TO LAW : (Violation of Sec. 5, Art. II of R.A. No. 9165). [3]

Criminal Case No. 10251

That on or about the evening of October 1, 2003 at Purok 4, Barangay 3, Agao, Butuan City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously possess zero point six one three one (0.6131) grams of methamphetamine hydrochloride, otherwise known as shabu, which is a dangerous drug.

CONTRARY TO LAW: (Violation of Section 11, Art. II of R.A. No. 9165). [4]

Eventually, the cases were consolidated and tried jointly.

Appellant pleaded NOT GUILTY to the charges against him. Thereafter, trial on the merits ensued.

In its Omnibus Judgment [5] dated September 14, 2005, the RTC found the appellant guilty beyond reasonable doubt of the offense charged, the dispositive portion of which, reads:

WHEREFORE, the Court hereby finds accused Allen Mantalaba y Udtojan GUILTY beyond reasonable doubt in Criminal Case No. 10250 for selling shabu, a dangerous drug, as defined and penalized under Section 5, Article II of Republic Act No. 9165. As provided for in Sec. 98 of R.A. 9165, where the offender is a minor, the penalty for acts punishable by life imprisonment to death shall be reclusion perpetua to death. As such, Allen Mantalaba y Udtojan is hereby sentenced to RECLUSION PERPETUA and to pay a fine of Five Hundred Thousand Pesos (P500,000.00).

In Criminal Case No. 10251, the Court likewise finds accused Allen Mantalaba y Udtojan GUILTY beyond reasonable doubt for illegally possessing shabu, a dangerous drug, weighing 0.6131 gram as defined and penalized under Section 11, Article II of Republic Act No. 9165 and accused being a minor at the time of the commission of the offense, after applying the Indeterminate Sentence Law, he is accordingly sentenced to six (6) years and one (1) day, as minimum, to eight (8) years, as maximum of prison mayor and to pay a fine of Three Hundred Thousand Pesos (P300,000.00).

SO ORDERED. [6]

The CA affirmed in toto the decision of the RTC. It disposed of the case as follows:

WHEREFORE, the Decision of the Regional Trial Court, Branch 1, Butuan City dated September 14, 2005 appealed from finding the accused-appellant Allen Udtojan Mantalaba guilty beyond reasonable doubt with the crime of Violation of Section 5 and Section 11, Article II of Republic Act 9165, otherwise known as the Comprehensive Dangerous Drugs Act, is AFFIRMED in toto, with costs against accused-appellant.

SO ORDERED. [7]

Thus, the present appeal.

Appellant states the lone argument that the lower court gravely erred in convicting him of the crime charged despite failure of the prosecution to prove his guilt beyond reasonable doubt.

According to appellant, there was no evidence of actual sale between him and the poseur-buyer. He also argues that the chain of custody of the seized shabu was not established. Finally, he asserts that an accused should be presumed innocent and that the burden of proof is on the prosecution.

The petition is unmeritorious.

Appellant insists that the prosecution did not present any evidence that an actual sale took place. However, based on the testimony of PO1 Randy Pajo, there is no doubt that the buy-bust operation was successfully conducted, thus:

PROS. RUIZ:

Q: Will you explain to this Honorable Court why did you conduct and how did you conduct your buy-bust operation at the time?

A: We conducted a buy-bust operation because of the report from our civilian assets that Allen Mantalaba was engaged in drug trade and selling shabu. And after we evaluated this Information we informed Inspector Dacillo that we will operate this accused for possible apprehension.

Q: Before you conducted your buy-bust operation, what procedure did you take?

A: We prepared the operational plan for buy-bust against the suspect. We prepared a request for powder dusting for our marked moneys to be used for the operation.

Q: Did you use marked moneys in this case?

x x x x

Q: Then armed with these marked moneys, what steps did you take next?

A: After briefing of our team, we proceeded immediately to the area.

Q: You mentioned of poseur-buyer, what would the poseur-buyer do?

A: We made an arrangement with the poseur-buyer that during the buying of shabu there should be a pre-arranged signal of the poseur-buyer to the police officer.

Q: What happened when your poseur-buyer who, armed with this marked moneys, approached the guy who was selling shabu at that time?

A: The poseur-buyer during that time gave the marked moneys to the suspect.

Q: Where were you when this poseur-buyer gave the moneys to the suspect?

A: We positioned ourselves about 10 meters away from the area of the poseur-buyer and the suspect.

Q: You mentioned of the pre-arranged signal, what would this be?

A: This is a case-to-case basis, your Honor, in the pre-arrangement signal because in the pre-arranged signal we used a cap and a towel. (sic) In the case, of this suspect, there was no towel there was no cap at the time of giving the shabu and the marked moneys to the suspect and considering also that that was about 7:00 o'clock in the evening. The poseur-buyer immediately proceeded to us and informed us that the shabu was already given by the suspect.

Q: What did you do next after that?

A: After examining the sachet of shabu that it was really the plastic containing white [crystalline] substance, we immediately approached the suspect.

Q: Who was with a (sic) suspect when you conducted the buy-bust operation[?] Was he alone or did he had (sic) any companion at that time?

A: He was alone.

Q: When you rushed up to the suspect what did you do?

A: We informed the suspect that we are the police officers and he has this constitutional rights and we immediately handcuffed him.

Q: Where were the marked moneys?

A: The marked moneys were thrown on the ground. After we handcuffed the suspect, we did not immediately searched in. We called the attention of the barangay officials to witness the search of the suspect.

Q: How many sachets of shabu have you taken from the suspect during the buy-bust operation?

A: We took from the possession of the suspect one big sachet of shabu.

x x x x

Q: What was the result of the searched (sic) for him?

A: We confiscated one big sachet of suspected shabu and the retrieval of 2 pieces of 100 peso bills as marked moneys. [8]

What determines if there was, indeed, a sale of dangerous drugs in a buy-bust operation is proof of the concurrence of all the elements of the offense, to wit: (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. [9] From the above testimony of the prosecution witness, it was well established that the elements have been satisfactorily met. The seller and the poseur-buyer were properly identified. The subject dangerous drug, as well as the marked money used, were also satisfactorily presented. The testimony was also clear as to the manner in which the buy-bust operation was conducted.

To corroborate the testimony of PO2 Pajo, the prosecution presented the testimony of Police Inspector Virginia Sison-Gucor, a forensic chemical officer, who confirmed that the plastic containing white crystalline substance was positive for methamphetamine hydrochloride and that the petitioner was in possession of the marked money used in the buy-bust operation, thus:

PROS. RUIZ:

Q: What was the result of your examination or what were your findings on the sachets of suspected shabu?

A: After the preliminary and confirmatory tests were conducted on the stated specimen, the result was positive for methamphetamine hydrochloride, a dangerous drug.

x x x x

Q: What were your findings when you examined the living person of the accused, as well as the marked money mentioned in this report?

A: According to my report, the findings for the living person of Allen Udtojan Mantalaba is positive to the test for the presence of bright orange ultra-violet fluorescent powder. x x x [10]

The above only confirms that the buy-bust operation really occurred. Once again, this Court stresses that a buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors. [11] It is often utilized by law enforcers for the purpose of trapping and capturing lawbreakers in the execution of their nefarious activities. [12] In *People v. Roa*, [13] this Court had the opportunity to expound on the nature and importance of a buy-bust operation, ruling that:

In the first place, coordination with the PDEA is not an indispensable requirement before police authorities

may carry out a buy-bust operation. While it is true that Section 86 [14] of Republic Act No. 9165 requires the National Bureau of Investigation, PNP and the Bureau of Customs to maintain "close coordination with the PDEA on all drug-related matters," the provision does not, by so saying, make PDEA's participation a condition sine qua non for every buy-bust operation. After all, a buy-bust is just a form of an in flagrante arrest sanctioned by Section 5, Rule 113 [15] of the Rules of the Court, which police authorities may rightfully resort to in apprehending violators of Republic Act No. 9165 in support of the PDEA. [16] A buy-bust operation is not invalidated by mere non-coordination with the PDEA.

Neither is the lack of prior surveillance fatal. The case of *People v. Lacbanes* [17] is quite instructive:

In *People v. Ganguso*, [18] it has been held that prior surveillance is not a prerequisite for the validity of an entrapment operation, especially when the buy-bust team members were accompanied to the scene by their informant. In the instant case, the arresting officers were led to the scene by the poseur-buyer. Granting that there was no surveillance conducted before the buy-bust operation, this Court held in *People v. Tranca*, [19] that there is no rigid or textbook method of conducting buy-bust operations. Flexibility is a trait of good police work. The police officers may decide that time is of the essence and dispense with the need for prior surveillance. [20]

The rule is that the findings of the trial court on the credibility of witnesses are entitled to great respect because trial courts have the advantage of observing the demeanor of the witnesses as they testify. This is more true if such findings were affirmed by the appellate court. When the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon this Court. [21]

In connection therewith, the RTC, as affirmed by the CA, was also correct in finding that the appellant is equally guilty of violation of Section 11 of RA 9165, or the illegal possession of dangerous drug. As an incident to the lawful arrest of the appellant after the consummation of the buy-bust operation, the arresting officers had the authority to search the person of the appellant. In the said search, the appellant was caught in possession of 0.6131 grams of shabu. In illegal possession of dangerous drugs, the elements are: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug. [22]

As a defense, appellant denied that he owns the shabu and the marked money confiscated from him. However, based on his cross-examination, such denial was not convincing enough to merit reasonable doubt, thus:

PROS. RUIZ:

Q: So it is true now that when these police officers passed you by they recovered from your possession one sachet of shabu?

A: Yes, sir.

Q: And it is true that after you were arrested and when you were searched they also found another sachet of shabu also in your pocket?

A: Yes, sir.

Q: And you mentioned in your counter-affidavit marked as Exhibit H for the prosecution that no money was taken from you because you have none at that time, is it not?

A: None sir, only the P250.00 which Jonald Ybanoso left to me.

Q: This P250.00 which Jonald left to you was also confiscated from your possession?

A: Yes, sir.

Q: Were not P200 of the P250.00 was thrown to the ground during the time you were arrested by the police?

A: No, sir.

Q: It was taken from your possession?

A: Yes, sir.

Q: And when the policemen brought you to the crime laboratory and had your hands tested for ultra-violet fluorescent powder, your hands tested positively for the presence of the said powder?

A: Yes, sir. [23]

Incidentally, 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 the Dangerous Drugs Act. In order to prosper, the defenses of denial and frame-up must be proved with strong and convincing evidence. [24]

Another contention raised by the appellant is the failure of the prosecution to show the chain of custody of the recovered dangerous drug. According to him, while it was Inspector Ferdinand B. Dacillo who signed the request for laboratory examination, only police officers Pajo and Simon were present in the buy-bust operation.

Section 21 of RA 9165 reads:

SEC. 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.

Non-compliance by the apprehending/buy-bust team with Section 21 is not fatal as long as there is justifiable ground therefor, and as long as the integrity and the evidentiary value of the confiscated/seized items are properly preserved by the apprehending officer/team. [25] Its non-compliance will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. [26] What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused. [27] In this particular case, it is undisputed that police officers Pajo and Simon were members of the buy-bust operation team. The fact that it was Inspector Ferdinand B. Dacillo who signed the letter-request for laboratory examination does not in any way affect the integrity of the items confiscated. All the requirements for the proper chain of custody had been observed. As testified to by PO2 Pajo regarding the procedure undertaken after the consummation of the buy-bust operation:

Prosecutor

Q: What did you do next after that?

A: After examining the sachet of shabu that it was really the plastic containing white [crystalline] in substance, we immediately approached the suspect.

x x x x

Q: When you rushed up to the suspect, what did you do?

A: We informed the suspect that we are the police officers and he has this [constitutional] rights and immediately handcuffed him.

Q: Where were the marked moneys?

A: The marked moneys were thrown on the ground. After we handcuffed the suspect, we did not immediately searched in. We called the attention of the barangay officials to witness the search of the suspect.

x x x x

Q: Now, before you searched the suspect you requested the presence of the barangay officials. Now, when these barangay officials were present, what did you do on the suspect?

A: We immediately searched the suspect.

Q: What was the result of the searched for him? (sic)

A: We confiscated one big sachet of suspected shabu and the retrieval of 2 pieces of P100.00 peso bills as marked moneys.

Q: You said the suspect threw the marked moneys when you searched him, where were the marked moneys?

A: On the ground.

Q: Who picked these marked moneys?

A: I was the one who picked the marked moneys.

Q: And then after you had picked the marked moneys and after you had the 2 pieces of sachets of shabu; one during the buy-bust and the other one during the search, what did you do [with] these 2 pieces of sachets of shabu and the marked moneys?

A: I recorded those items recovered, sir, during the search to the Certificate of Inventory.[28]

As ruled by this Court, what is crucial in the chain of custody is the marking of the confiscated item which, in the present case, was complied with, thus:

Crucial in proving chain of custody is the marking [29] of the seized drugs or other related items immediately after they are seized from the accused. Marking after seizure is the starting point in the custodial link, thus, it is vital that the seized contraband are immediately marked because succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of criminal proceedings, obviating switching, "planting," or contamination of evidence. [30]

Anent the age of the appellant when he was arrested, this Court finds it appropriate to discuss the effect of his minority in his suspension of sentence. The appellant was seventeen (17) years old when the buy-bust operation took place or when the said offense was committed, but was no longer a minor at the time of the promulgation of the RTC's Decision.

It must be noted that RA 9344 took effect on May 20, 2006, while the RTC promulgated its decision on this case on September 14, 2005, when said appellant was no longer a minor. The RTC did not suspend the sentence in accordance with Article 192 of P.D. 603, The Child and Youth Welfare Code [31] and Section 32 of A.M. No. 02-1-18-SC, the Rule on Juveniles in Conflict with the Law, [32] the laws that were applicable at the time of the promulgation of judgment, because the imposable penalty for violation of Section 5 of RA 9165 is life imprisonment to death.

It may be argued that the appellant should have been entitled to a suspension of his sentence under Sections 38 and 68 of RA 9344 which provide for its retroactive application, thus:

SEC. 38. Automatic Suspension of Sentence. - Once the child who is under eighteen (18) years of age at the time of the commission of the offense is found guilty of the offense charged, the court shall determine and

ascertain any civil liability which may have resulted from the offense committed. However, instead of pronouncing the judgment of conviction, the court shall place the child in conflict with the law under suspended sentence, without need of application: Provided, however, That suspension of sentence shall still be applied even if the juvenile is already eighteen years (18) of age or more at the time of the pronouncement of his/her guilt.

Upon suspension of sentence and after considering the various circumstances of the child, the court shall impose the appropriate disposition measures as provided in the Supreme Court [Rule] on Juveniles in Conflict with the Law.

x x x

Sec. 68. Children Who Have Been Convicted and are Serving Sentence. - Persons who have been convicted and are serving sentence at the time of the effectivity of this Act, and who were below the age of eighteen (18) years at the time of the commission of the offense for which they were convicted and are serving sentence, shall likewise benefit from the retroactive application of this Act. x x x

However, this Court has already ruled in *People v. Sarcia* [33] that while Section 38 of RA 9344 provides that suspension of sentence can still be applied even if the child in conflict with the law is already eighteen (18) years of age or more at the time of the pronouncement of his/her guilt, Section 40 of the same law limits the said suspension of sentence until the child reaches the maximum age of 21. The provision states:

SEC. 40. Return of the Child in Conflict with the Law to Court. - If the court finds that the objective of the disposition measures imposed upon the child in conflict with the law have not been fulfilled, or if the child in conflict with the law has willfully failed to comply with the condition of his/her disposition or rehabilitation program, the child in conflict with the law shall be brought before the court for execution of judgment.

If said child in conflict with the law has reached eighteen (18) years of age while under suspended sentence, the court shall determine whether to discharge the child in accordance with this Act, to order execution of sentence, or to extend the suspended sentence for a certain specified period or until the child reaches the maximum age of twenty-one (21) years.

Hence, the appellant, who is now beyond the age of twenty-one (21) years can no longer avail of the provisions of Sections 38 and 40 of RA 9344 as to his suspension of sentence, because such is already moot and academic. It is highly noted that this would not have happened if the CA, when this case was under its jurisdiction, suspended the sentence of the appellant. The records show that the appellant filed his notice of appeal at the age of 19 (2005), hence, when RA 9344 became effective in 2006, appellant was 20 years old, and the case having been elevated to the CA, the latter should have suspended the sentence of the appellant because he was already entitled to the provisions of Section 38 of the same law, which now allows the suspension of sentence of minors regardless of the penalty imposed as opposed to the provisions of Article 192 of P.D. 603. [34]

Nevertheless, the appellant shall be entitled to appropriate disposition under Section 51 of RA No. 9344, which provides for the confinement of convicted children as follows: [35]

SEC. 51. Confinement of Convicted Children in Agricultural Camps and other Training Facilities. - A child in conflict with the law may, after conviction and upon order of the court, be made to serve his/her sentence, in lieu of confinement in a regular penal institution, in an agricultural camp and other training facilities that may be established, maintained, supervised and controlled by the BUCOR, in coordination with the DSWD.

In finding the guilt beyond reasonable doubt of the appellant for violation of Section 5 of RA 9165, the RTC imposed the penalty of reclusion perpetua as mandated in Section 98 [36] of the same law. A violation of Section 5 of RA 9165 merits the penalty of life imprisonment to death; however, in Section 98, it is provided that, where

the offender is a minor, the penalty for acts punishable by life imprisonment to death provided in the same law shall be reclusion perpetua to death. Basically, this means that the penalty can now be graduated as it has adopted the technical nomenclature of penalties provided for in the Revised Penal Code. The said principle was enunciated by this Court in *People v. Simon*, [37] thus:

We are not unaware of cases in the past wherein it was held that, in imposing the penalty for offenses under special laws, the rules on mitigating or aggravating circumstances under the Revised Penal Code cannot and should not be applied. A review of such doctrines as applied in said cases, however, reveals that the reason therefor was because the special laws involved provided their own specific penalties for the offenses punished thereunder, and which penalties were not taken from or with reference to those in the Revised Penal Code. Since the penalties then provided by the special laws concerned did not provide for the minimum, medium or maximum periods, it would consequently be impossible to consider the aforesaid modifying circumstances whose main function is to determine the period of the penalty in accordance with the rules in Article 64 of the Code.

This is also the rationale for the holding in previous cases that the provisions of the Code on the graduation of penalties by degrees could not be given supplementary application to special laws, since the penalties in the latter were not components of or contemplated in the scale of penalties provided by Article 71 of the former. The suppletory effect of the Revised Penal Code to special laws, as provided in Article 10 of the former, cannot be invoked where there is a legal or physical impossibility of, or a prohibition in the special law against, such supplementary application.

The situation, however, is different where although the offense is defined in and ostensibly punished under a special law, the penalty therefor is actually taken from the Revised Penal Code in its technical nomenclature and, necessarily, with its duration, correlation and legal effects under the system of penalties native to said Code. When, as in this case, the law involved speaks of prision correccional, in its technical sense under the Code, it would consequently be both illogical and absurd to posit otherwise.

x x x x

Prefatorily, what ordinarily are involved in the graduation and consequently determine the degree of the penalty, in accordance with the rules in Article 61 of the Code as applied to the scale of penalties in Article 71, are the stage of execution of the crime and the nature of the participation of the accused. However, under paragraph 5 of Article 64, when there are two or more ordinary mitigating circumstances and no aggravating circumstance, the penalty shall be reduced by one degree. Also, the presence of privileged mitigating circumstances, as provided in Articles 67 and 68, can reduce the penalty by one or two degrees, or even more. These provisions of Articles 64(5), 67 and 68 should not apply in toto in the determination of the proper penalty under the aforesaid second paragraph of section 20 of Republic Act No. 6425, to avoid anomalous results which could not have been contemplated by the legislature.

Thus, paragraph 5 of Article 61 provides that when the law prescribes a penalty in some manner not specially provided for in the four preceding paragraphs thereof, the courts shall proceed by analogy therewith. Hence, when the penalty prescribed for the crime consists of one or two penalties to be imposed in their full extent, the penalty next lower in degree shall likewise consist of as many penalties which follow the former in the scale in Article 71. If this rule were to be applied, and since the complex penalty in this case consists of three discrete penalties in their full extent, that is, prision correccional, prision mayor and reclusion temporal, then one degree lower would be arresto menor, destierro and arresto mayor. There could, however, be no further reduction by still one or two degrees, which must each likewise consist of three penalties, since only the penalties of fine and public censure remain in the scale.

The Court rules, therefore, that while modifying circumstances may be appreciated to determine the periods of the corresponding penalties, or even reduce the penalty by degrees, in no case should such graduation of

penalties reduce the imposable penalty beyond or lower than prision correccional. It is for this reason that the three component penalties in the second paragraph of Section 20 shall each be considered as an independent principal penalty, and that the lowest penalty should in any event be prision correccional in order not to depreciate the seriousness of drug offenses. Interpretatio fienda est ut res magis valeat quam pereat. Such interpretation is to be adopted so that the law may continue to have efficacy rather than fail. A perfect judicial solution cannot be forged from an imperfect law, which impasse should now be the concern of and is accordingly addressed to Congress. [38]

Consequently, the privileged mitigating circumstance of minority [39] can now be appreciated in fixing the penalty that should be imposed. The RTC, as affirmed by the CA, imposed the penalty of reclusion perpetua without considering the minority of the appellant. Thus, applying the rules stated above, the proper penalty should be one degree lower than reclusion perpetua, which is reclusion temporal, the privileged mitigating circumstance of minority having been appreciated. Necessarily, also applying the Indeterminate Sentence Law (ISLAW), the minimum penalty should be taken from the penalty next lower in degree which is prision mayor and the maximum penalty shall be taken from the medium period of reclusion temporal, there being no other mitigating circumstance nor aggravating circumstance. [40] The ISLAW is applicable in the present case because the penalty which has been originally an indivisible penalty (reclusion perpetua to death), where ISLAW is inapplicable, became a divisible penalty (reclusion temporal) by virtue of the presence of the privileged mitigating circumstance of minority. Therefore, a penalty of six (6) years and one (1) day of prision mayor, as minimum, and fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum, would be the proper imposable penalty.

WHEREFORE, the Decision dated July 31, 2008 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00240-MIN, affirming the Omnibus Judgment dated September 14, 2005 of the Regional Trial Court, Branch 1, Butuan City in Criminal Case No. 10250 and Criminal Case No. 10251, finding appellant Allen Udtojan Mantalaba, guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of RA 9165 is hereby **AFFIRMED** with the **MODIFICATION** that the penalty that should be imposed on appellant's conviction of violation of Section 5 of RA 9165, is six (6) years and one (1) day of prision mayor, as minimum, and fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum.

SO ORDERED.

Carpio,* Velasco, Jr., (Chairperson), Abad, and Mendoza, JJ., concur.

[*] Designated additional member, per Special Order No. 1042, dated July 6, 2011.

[1] Penned by Associate Justice Ruben C. Ayson, with Associate Justices Rodrigo F. Lim, Jr. and Michael P. Elbinias, concurring.

[2] Penned by Judge Eduardo S. Casals.

[3] Records, Crim. Case No. 10250, pp. 1-2.

[4] Records, Crim. Case No. 10251, pp. 1-2.

[5] CA rollo, pp. 62-78.

[6] Id. at 77-78.

[7] Id. at 122.

[8] TSN, October 27, 2004, pp. 7-9.

[9] *People v. Daria, Jr.*, G.R. No. 186138, September 11, 2009, 599 SCRA 688, 701, citing *People v. Dumlao*, 562 SCRA 762, 770 (2008).

[10] TSN, March 2, 2005, pp. 7-9.

[11] *People v. Chua Uy*, 384 Phil. 70, 85 (2000).

[12] *Id.*

[13] G.R. No. 186134, May 6, 2010, 620 SCRA 359.

[14] Section 86. Transfer, Absorption, and Integration of All Operating Units on Illegal Drugs into the PDEA and Transitory Provisions. - The Narcotics Group of the PNP, the Narcotics Division of the NBI and the Customs Narcotics Interdiction Unit are hereby abolished; however they shall continue with the performance of their task as detail service with the PDEA, subject to screening, until such time that the organizational structure of the Agency is fully operational and the number of graduates of the PDEA Academy is sufficient to do the task themselves. x x x.

x x x x

Nothing in this Act shall mean a diminution of the investigative powers of the NBI and the PNP on all other crimes as provided for in their respective organic laws: Provided, however, That when the investigation being conducted by the NBI, PNP or any ad hoc anti-drug task force is found to be a violation of any of the provisions of this Act, the PDEA shall be the lead agency. The NBI, PNP or any of the task force shall immediately transfer the same to the PDEA: Provided, further, That the NBI, PNP and the Bureau of Customs shall maintain close coordination with the PDEA on all drug related matters. (Emphasis supplied)

[15] Section 5. Arrest without warrant; when lawful. -- A peace officer or a private person may, without a warrant, arrest a person:

- (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
- (b) x x x; and
- (c) x x x.

In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with section 7 of Rule 112.

[16] Even the Implementing Rules and Regulation (IRR) of Republic Act No. 9165 does not make PDEA's participation a mandatory requirement before the other law enforcement agencies may conduct buy-bust operations. Section 86(a) of the said IRR provides:

- (a) Relationship/Coordination between PDEA and Other Agencies - The PDEA shall be the lead agency in the enforcement of the Act, while the PNP, the NBI and other law enforcement agencies shall continue to conduct anti-drug operations in support of the PDEA: Provided, that the said agencies shall, as far as practicable, coordinate with the PDEA prior to anti-drug operations; Provided, further, that, in any case said agencies shall inform the PDEA of their anti-drug operations within twenty-four hours from the time of the actual custody of the suspects or seizure of said drugs and substances, as well as paraphernalia and transport equipment used in illegal activities involving such drugs and/or substances, and shall regularly update the PDEA on the status of the cases involving the said anti-drug operations; Provided furthermore, that raids, seizures, and other anti-drug

operations conducted by the PNP, the NBI, and other law enforcement agencies prior to the approval of this IRR shall be valid and authorized; Provided, finally, that nothing in this IRR shall deprive the PNP, the NBI, other law enforcement personnel and the personnel of the Armed Forces of the Philippines (AFP) from effecting lawful arrests and seizures in consonance with the provisions of Section 5, Rule 113 of the Rules of Court. (Emphasis supplied.)

[17] 336 Phil. 933, 941 (1997).

[18] G.R. No. 115430, November 23, 1995, 250 SCRA 268, 278-279.

[19] G.R. No. 110357, August 17, 1994, 235 SCRA 455, 463.

[20] *People v. Roa*, supra note 13, at 368-370.

[21] *People v. Lazaro, Jr.*, G.R. No. 186418, October 16, 2009, 604 SCRA 250, 268-269, citing *People v. Naquita*, 560 SCRA 430, 444, (2008); *People v. Concepcion*, 556 SCRA 421, 440 (2008); *People v. Santiago*, 539 SCRA 198, 217 (2007).

[22] *People v. Encila*, G.R. No. 182419, February 10, 2009, 578 SCRA 341, 361, citing *People v. Negata*, 452 Phil. 846, 853 (2003).

[23] TSN, June 3, 2005, pp. 11-12. (Emphasis supplied.)

[24] *People v. Lazaro, Jr.*, supra note 21, at 269, citing *People v. Naquita*, supra note 21; *People v. Concepcion*, supra note 21; *People v. Santiago*, supra note 21.

[25] *People v. Pringas*, G.R. No. 175928, August 31, 2007, 531 SCRA 828, 842, citing *People v. Sta. Maria*, 516 SCRA 621 (2007), citing Section 21.a. of the Implementing Rules and Regulation of Republic Act No. 9165.

Section 21. (a) x x x 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.

[26] *Id.* at 842-843.

[27] *Id.* at 843.

[28] TSN, October 27, 2004, pp. 9-11.

[29] In criminal procedure, "marking" means the "placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the items/s seized" (*People v. Sanchez*, G.R. No. 175832, October 15, 2008, 569 SCRA 164).

[30] *People v. Coreche*, G.R. No. 182528, August 14, 2009, 596 SCRA 350, 357.

[31] ART. 192. Suspension of Sentence and Commitment of Youthful Offender. -- If after hearing the evidence in the proper proceedings, the court should find that the youthful offender has committed the acts charged against him the court shall determine the imposable penalty, including any civil liability chargeable against him. However, instead of pronouncing judgment of conviction, the court shall suspend all further proceedings and shall commit such minor to the custody or care of the Department of Social Welfare, or to any training institution operated by the government, or duly licensed agencies or any other responsible person, until he shall have reached twenty-one years of age or, for a shorter period as the court may deem proper, after considering the reports and recommendations of the Department of Social Welfare or the agency or responsible individual under whose care he has been committed.

Upon receipt of the application of the youthful offender for suspension of his sentence, the court may require the Department of Social Welfare and Development to prepare and submit to the court a social case study report over the offender and his family.

The youthful offender shall be subject to visitation and supervision by a representative of the Department of Social Welfare and Development or any duly licensed agency or such other officer as the Court may designate subject to such conditions as it may prescribe.

The benefits of this article shall not apply to a youthful offender who has once enjoyed suspension of sentence under its provisions or to one who is convicted for an offense punishable by death or life imprisonment or to one who is convicted of an offense by the Military Tribunals. (As amended by P.D. Nos. 1179 and 1210) (Emphasis theirs).

[32] Sec. 32. Automatic Suspension of Sentence and Disposition Orders.- The sentence shall be suspended without need of application by the juvenile in conflict with the law. The court shall set the case for disposition conference within fifteen (15) days from the promulgation of sentence which shall be attended by the social worker of the Family Court, the juvenile, and his parents or guardian ad litem. It shall proceed to issue any or a combination of the following disposition measures best suited to the rehabilitation and welfare of the juvenile:

1. Care, guidance, and supervision orders;
2. Community service orders;
3. Drug and alcohol treatment;
4. Participation in group counselling and similar activities;
5. Commitment to the Youth Rehabilitation Center of the DSWD or other centers for juveniles in conflict with the law authorized by the Secretary of the DSWD.

The Social Services and Counselling Division (SSCD) of the DSWD shall monitor the compliance by the juvenile in conflict with the law with the disposition measure and shall submit regularly to the Family Court a status and progress report on the matter. The Family Court may set a conference for the evaluation of such report in the presence, if practicable, of the juvenile, his parents or guardian, and other persons whose presence may be deemed necessary.

The benefits of suspended sentence shall not apply to a juvenile in conflict with the law who has once enjoyed suspension of sentence, or to one who is convicted of an offense punishable by death, reclusion perpetua or life imprisonment, or when at the time of promulgation of judgment the juvenile is already eighteen (18) years of age or over. (Emphasis theirs).

[33] G.R. No. 169641, September 10, 2009, 599 SCRA 20, 50.

[34] See note 31.

[35] *People v. Sarcia*, supra note 33, at 50-51.

[36] Section 98. Limited Applicability of the Revised Penal Code. - Notwithstanding any law, rule or regulation to the contrary, the provisions of the Revised Penal Code (Act No. 3814), as amended, shall not apply to the provisions of this Act, except in the case of minor offenders. Where the offender is a minor, the penalty for acts punishable by life imprisonment to death provided herein shall be reclusion perpetua to death. (Emphasis supplied.)

[37] G.R. No. 93028, July 29, 1994, 234 SCRA 555.

[38] *Id.* at 573-579. (Emphasis supplied.)

[39] SEC. 6. Minimum Age of Criminal Responsibility. - A child fifteen (15) years of age or under at the time of the commission of the offense shall be exempt from criminal liability. However, the child shall be subjected to an intervention program pursuant to Section 20 of this Act.

A child above fifteen (15) years but below eighteen (18) years of age shall likewise be exempt from criminal liability and be subjected to an intervention program, unless he/she has acted with discernment, in which case, such child shall be subjected to the appropriate proceedings in accordance with this Act. (Emphasis supplied.)

The exemption from criminal liability herein established does not include exemption from civil liability, which shall be enforced in accordance with existing laws.

[40] See Revised Penal Code, Art. 64.

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