

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MANUEL CRUZ Y CRUZ, ACCUSED-APPELLANT.

G.R. No. 187047. June 15, 2011

Ponente: PEREZ, J.

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PEREZ, J.:

This is an appeal from the Decision [1] dated 23 September 2008 of the Court of Appeals in CA-G.R. CR-HC No. 02603, affirming in toto the Decision [2] dated 22 September 2006 of the Regional Trial Court (RTC) of Parañaque City, Branch 259, in Criminal Case No. 05-0254, finding herein appellant Manuel Cruz y Cruz guilty beyond reasonable doubt of illegal sale of 1.53 grams of shabu, a dangerous drug, in violation of Section 5, [3] Article II of Republic Act No. 9165, [4] thereby, sentencing him to suffer the penalty of life imprisonment and to pay a fine of P500,000.00.

Appellant Manuel Cruz y Cruz was charged in two (2) separate Informations [5] both dated 24 February 2005 with violation of Sections 5 and 11, [6] Article II of Republic Act No. 9165, which were respectively docketed as Criminal Case No. 05-0254 and Criminal Case No. 05-0255. The Informations read as follows:

Criminal Case No. 05-0254

That on or about the 23[rd] day of February 2005 in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named [appellant], a (sic) not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport Methylamphetamine Hydrochloride (shabu) weighing 1.53 gram, a dangerous drugs (sic). [7] [Emphasis supplied].

Criminal Case No. 05-0255

That on or about the 23[rd] day of February 2005, in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named [appellant], not being authorized by law to possess, did then and there willfully, unlawfully and feloniously have in his possession and under his control and custody Methylamphetamine Hydrochloride (shabu) weighing 1.42 gram, a dangerous drug. [8] [Emphasis supplied].

Upon arraignment, appellant, assisted by counsel de oficio, pleaded NOT GUILTY [9] to both charges. By agreement of the parties, the pre-trial conference was terminated. [10] Trial on the merits ensued thereafter.

The prosecution presented the testimony of Police Officers 2 Nemesio Gallano (PO2 Gallano) and Darwin Boiser (PO2 Boiser), both of whom are members of the Philippine National Police (PNP) assigned at the District Anti-Illegal Drugs Special Operation Team (DAID-SOT), Southern Police District, Fort Bonifacio, Taguig, Metro Manila. [11] PO2 Gallano acted as the poseur-buyer while PO2 Boiser served as the immediate back-up of PO2 Gallano in the buy-bust operation against appellant.

The formal taking of the testimony of Police Inspector Abraham Verde Tecson (P/Insp. Tecson) was dispensed [12] with after both parties stipulated on the following Exhibits and its sub-markings, to wit: (1) Exhibit "A," the

Request for Laboratory Examination [13] of the two small heat-sealed transparent plastic sachets containing white crystalline substance seized from appellant and duly marked as "NG-1-230205" and "NG-2-230205," respectively; (2) Exhibit "B," the small brown size mailing envelope that contained the two small heat-sealed transparent plastic sachets with white crystalline substance; [14] and (3) Exhibit "C," the Chemistry Report No. D-143-05. [15] The said stipulation was subject to the condition that P/Insp. Tecson has no personal knowledge of the facts and circumstances surrounding the recovery of the subject specimen; that he only made a qualitative examination of the same; and that Physical Science Report No. D-143-05 was not made under oath. [16]

As culled from the records and testimonies of the aforesaid prosecution witnesses, the factual antecedents of this case are as follows:

On 23 February 2005, at around 1:30 p.m., while Senior Police Officer 2 Rey Millari (SPO2 Millari) was at their office at DAID-SOT, Southern Police District, Fort Bonifacio, Taguig, Metro Manila, a male informant came in with an information that a certain alias Maning was engaged in selling illegal drugs at Sitio de Asis, Barangay San Martin de Porres, Parañaque City. SPO2 Millari immediately relayed such information to Police Chief Inspector Tito M. Oraya (P/Chief Insp. Oraya), Chief of DAID-SOT. P/Chief Insp. Oraya then directed PO2 Gallano, one of the police operatives of DAID-SOT, to verify the said information. PO2 Gallano acceded by making telephone calls to the people he knew in Sitio de Asis, Barangay San Martin de Porres, Parañaque City. PO2 Gallano asked each of them if they knew a certain alias Maning to which all positively responded and disclosed that alias Maning was, indeed, involved in the illegal sale of drugs in their place. [17]

Thereafter, PO2 Gallano told P/Chief Insp. Oraya that the information relayed to them by the male informant was true and accurate. Accordingly, a buy-bust operation against alias Maning was planned and a team was formed composed of: PO2 Gallano, who was designated as the poseur-buyer; PO2 Boiser, who was to serve as PO2 Gallano's immediate back-up; SPO2 Millari, Police Officer 3 Sergio Delima (PO3 Delima), PO2 Gerald Marion Lagos (PO2 Lagos), PO2 Cerilo Zamora (PO2 Zamora) and the other police operatives of DAID-SOT, all of whom were assigned as perimeter back-up. P/Chief Insp. Oraya then gave four (4) pieces of P500.00 peso bills amounting to P2,000.00 to PO2 Gallano as buy-bust money, which the latter marked with "JG," representing the initials of Jose Gentiles, Chief of the District Intelligence and Investigation Branch. During the briefing, the male informant was also present. The pre-arranged signal of the buy-bust team was a missed call from PO2 Gallano to PO2 Boiser. [18]

At around 5:00 p.m., the buy-bust team, together with the male informant, proceeded to the target area on board two vehicles. Upon arrival thereat at around 5:45 p.m., the buy-bust team parked their vehicles along Tanyag Street. PO2 Gallano and the male informant alighted from their vehicle and walked towards the house of alias Maning while the rest of the buy-bust team followed them discreetly. Upon reaching the house of alias Maning, who at that time was standing on a street in front of his house, the male informant, who personally knew alias Maning, approached the latter and introduced PO2 Gallano as a security guard in need of shabu for his personal use. At this juncture, PO2 Boiser and the rest of the buy-bust team, who were all in civilian clothes, were already strategically deployed at the target area at a distance of about 10 to 15 meters away from alias Maning, PO2 Gallano and the male informant. The male informant likewise told alias Maning that PO2 Gallano is his friend. Alias Maning then asked PO2 Gallano how much shabu he would buy and where he used to buy such stuff. PO2 Gallano told alias Maning that he used to get it in Ususan, Taguig. Alias Maning then asked for PO2 Gallano's money and the latter handed to the former the marked money consisting of four (4) pieces of P500.00 peso bills amounting to P2,000.00. In exchange thereto, alias Maning gave PO2 Gallano one piece plastic sachet containing white crystalline substance equivalent to the money the latter gave to the former. [19]

Immediately thereafter, PO2 Gallano gave a missed call to PO2 Boiser as their pre-arranged signal signifying that

the sale transaction has already been consummated. PO2 Boiser and the rest of the buy-bust team, who were just within the vicinity of the target area, proceeded, at once, to the place where PO2 Gallano, alias Maning and the male informant were. PO2 Gallano and the other members of the buy-bust team then introduced themselves to alias Maning as police officers. PO2 Gallano with the help of PO2 Boiser effected the arrest of alias Maning. In the course thereof, another plastic sachet containing white crystalline substance was recovered by PO2 Gallano in the possession of alias Maning. The marked money consisting of four (4) pieces of P500 peso bills amounting to P2,000.00 was also recovered from alias Maning. PO2 Gallano then marked the one piece plastic sachet containing white crystalline substance subject of the sale with "NG-1-230205" while the other plastic sachet also containing white crystalline substance found in the possession of alias Maning on the occasion of his arrest was marked with "NG-2-230205." [20]

Thereafter, appellant was brought to the office of DAID-SOT, Southern Police District, Fort Bonifacio, Taguig, Metro Manila, for investigation and proper documentation. In the course thereof, alias Maning was later on identified to be Manuel Cruz y Cruz, the herein appellant. A request for the drug testing of the appellant and for the laboratory examination of the two (2) plastic sachets containing white crystalline substance seized from him were likewise made. The said two (2) plastic sachets containing white crystalline substance were subsequently brought to the PNP Crime Laboratory in Camp Crame, Quezon City, for examination. The examination conducted thereon yielded positive result to the tests for the presence of methylamphetamine hydrochloride or shabu, a dangerous drug, [21] as evidenced by Chemistry Report No. D-143-05. [22]

The defense, on the other hand, presented the lone testimony of herein appellant, who denied all the accusations against him.

Appellant claimed that, on 23 February 2005, he was working as a dispatcher of passenger jeepneys in Tanyag Street, Sitio de Asis, Barangay San Martin de Porres, Parañaque City. At around 3:00 p.m., he went home to answer the call of nature and to take a bath. From his workplace to his house, there is a distance of about 100 meters. Upon arrival thereat, he found out that somebody was still using the comfort room so he opted to stay in the garage and watched the children playing video games. [23]

After a while, four to five male persons in civilian clothes, who introduced themselves to be policemen, entered the gate of his house and immediately arrested and handcuffed him for his alleged refusal to cooperate and to give them "tong." He was then pulled outside and was forcefully boarded inside a vehicle. He was, thereafter, brought to Fort Bonifacio, Taguig, Metro Manila, and was detained thereat for the alleged recovery of shabu in his possession. The following day, he was brought to the Parañaque City Hall for inquest. The fiscal informed him that he was charged with the illegal sale of shabu. He was later on detained at the Parañaque City Jail. [24]

The trial court, convinced on the merits of the prosecution's case, rendered a Decision dated 22 September 2006 finding appellant guilty beyond reasonable doubt in Criminal Case No. 05-0254 for the crime of illegal sale of shabu, a dangerous drug, in violation of Section 5, Article II of Republic Act No. 9165 and sentenced him to suffer the penalty of life imprisonment and a fine of P500,000.00. The trial court, however, ordered the dismissal of Criminal Case No. 05-0255 for the crime of illegal possession of shabu, a dangerous drug, in violation of Section 11, Article II of Republic Act No. 9165, elucidating that appellant's possession of small quantity of shabu can be considered as part and parcel of his nefarious trade. The trial court, thus, decreed:

WHEREFORE, PREMISES CONSIDERED, finding MANUEL CRUZ [y] CRUZ GUILTY beyond reasonable doubt for Violation of Section 5, Art. II, [Republic Act No.] 9165, he is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of P500,000.00. Criminal Case No. 05-0255 against Manuel Cruz Cruz for alleged violation of Section 11, Art. II, [Republic Act No.] 9165 is ordered dismissed said possession of small quantity of shabu being considered as part and parcel of his nefarious trade.

The Clerk of Court is directed to prepare the Mittimus for the immediate transfer of MANUEL CRUZ [y] CRUZ from Parañaque City Jail to New Bilibid Prisons, Muntinlupa City, and to forward the specimen subject of these cases to the Philippine Drug Enforcement Agency [PDEA] for proper disposition. [25] [Emphasis supplied].

Appellant appealed the aforesaid trial court's Decision to the Court of Appeals via Notice of Appeal. [26]

In his Brief, appellant assigned the following errors:

I.

THE TRIAL COURT GRAVELY ERRED IN NOT FINDING THE [APPELLANT]'S SEARCH AND ARREST AS ILLEGAL.

II.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE [APPELLANT] OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT. [27]

After a thorough study of the records, the Court of Appeals rendered the assailed Decision dated 23 September 2008, affirming in toto appellant's conviction for violation of Section 5, Article II of Republic Act No. 9165.

The Court of Appeals ratiocinated as follows:

Sufficient evidence was presented by the prosecution to show that appellant was caught in flagrante delicto in a legitimate entrapment operation conducted by the police.

x x x x

The passing of shabu from appellant's hand to PO2 [Gallano] in exchange for P2,000.00 constituted a violation of Republic Act No. 9165. The police officers were, therefore, justified in arresting appellant without any warrant and in seizing the plastic sachets containing white crystalline substance as corpus delicti of the crime.

x x x

Appellant argues that he was framed up. The police officers planted the evidence against him and records do not show that the marked money was recorded in the police blotter.

Appellant's defense of denial and frame up is without basis. The testimony of PO2 [Gallano] was corroborated by the testimony of PO2 [Boiser]. Their testimonies are supported by other evidence which are - (a) the sachets containing illegal substance seized from the appellant and (b) the marked money. x x x

x x x x

The Court is convinced that the guilt of the appellant was proven beyond reasonable doubt. He was caught in flagrante delicto in a buy-bust operation. A buy-bust operation is a form of entrapment whereby ways and means are resorted to for the purpose of trapping and capturing the lawbreakers in the execution of their criminal plan. Unless there is a convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty, their testimony on the operation deserves full faith and credit. [28] [Emphasis supplied].

Not satisfied, appellant comes to this Court contending that his warrantless arrest was illegal as he was not committing any crime at the time of his arrest. Neither can it be said that he was about nor has just committed a crime as he was merely standing in the garage of his house waiting for his turn to use the bathroom.

Appellant further insists that the police officers merely planted the shabu seized from him so he can be prosecuted

for the illegal sale of dangerous drugs, i.e., shabu, in retaliation for their failure to extort money from him.

In front of the established circumstances leading to the warrantless arrest, appellant's contentions fail to persuade.

Primarily, it is a well-entrenched principle that findings of fact of the trial court as to the credibility of witnesses are accorded great weight and respect when no glaring errors, gross misapprehension of facts, and speculative, arbitrary and unsupported conclusions can be gathered from such findings. The rationale behind this rule 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. [29] In the case under consideration, this Court finds no cogent reason to deviate from the findings of the trial court, which were affirmed by the appellate court.

Jurisprudence clearly set the essential elements to be established in the prosecution for illegal sale of shabu, viz: (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 payment therefor. Succinctly, the delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money successfully consummates the buy-bust transaction. [30] What is material, therefore, is the proof that the transaction or sale transpired, coupled with the presentation in court of the corpus delicti. [31] In this case, the prosecution successfully established the aforesaid elements beyond moral certainty.

To note, appellant was caught in flagrante delicto delivering one piece plastic sachet containing white crystalline substance weighing 1.53 grams to PO2 Gallano, the poseur-buyer, for a consideration of P2,000.00. The white crystalline substance contained in the said one piece plastic sachet handed by appellant to PO2 Gallano was later on confirmed to be methamphetamine hydrochloride or shabu per Chemistry Report No. D-143-05 dated 24 February 2005 issued by the PNP Crime Laboratory. During trial, PO2 Gallano positively identified appellant as the same person who sold and handed him the one piece plastic sachet containing white crystalline substance, proven to be shabu, in exchange for P2,000.00. [32] When the said one piece plastic sachet containing white crystalline substance confirmed to be shabu was presented in court, PO2 Gallano identified it to be the same object sold to him by appellant because of the markings found thereon, i.e., "NG-1-230205," which he, himself, has written at the place where appellant was arrested. PO2 Gallano similarly identified in court the recovered buy-bust money from appellant consisting of four (4) pieces of P500 peso bills amounting to P2,000.00 with markings "JG," representing the initials of Jose Gentiles, the Chief of the District Intelligence and Investigation Branch.

More so, the testimonies of the prosecution witnesses and the documentary evidence offered in court gave a detailed picture of the series of events that transpired in the afternoon of 23 February 2005 in Sitio de Asis, Barangay San Martin de Porres, Parañaque City, leading to the consummation of the transaction, i.e., illegal sale of shabu. The prosecution vividly showed how PO2 Gallano, the poseur-buyer, was introduced by their male informant to appellant as a security guard in need of shabu for his personal use. The same was followed by a query from the appellant as to how much shabu PO2 Gallano would buy. Appellant subsequently asked for PO2 Gallano's money. The latter then handed to the former the marked money consisting of four (4) pieces of P500.00 peso bills amounting to P2,000.00. In exchange thereto, appellant gave PO2 Gallano one piece plastic sachet containing white crystalline substance equivalent to the money the latter gave to the former.

With the foregoing, it is crystal clear that the sale transaction of illicit drug between the poseur-buyer and the appellant was successfully consummated. Accordingly, whatever doubt in connection with appellant's culpability can no longer be questioned after being caught in a buy-bust operation conducted by the police operatives of the DAID-SOT, Southern Police District, Fort Bonifacio, Taguig, Metro Manila.

On the legality of appellant's warrantless arrest, it bears stressing that he was arrested in an entrapment operation

where he was caught in flagrante delicto selling shabu. An arrest made after an entrapment operation does not require a warrant inasmuch as it is considered a valid warrantless arrest pursuant to Rule 113, Section 5(a) of the Rules of Court, [33] which specifically provides that:

SEC. 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;

In *People v. Sembrano* [34] citing *People v. Agulay*, [35] this Court held that a buy-bust operation is a form of entrapment which in recent years has been accepted as a valid and effective mode of apprehending drug pushers. If carried out with due regard for constitutional and legal safeguards, a buy-bust operation, as in this case, deserves judicial sanction. [36] Moreover, in a buy-bust operation, the violator is caught in flagrante delicto and the police officers conducting the same are not only authorized but also duty-bound to apprehend the violator and consequently search him for anything that may have been part of or used in the commission of the crime. [37]

In the case at bench, after the police operatives of DAID-SOT, Southern Police District, Fort Bonifacio, Taguig, Metro Manila, received information from their male informant regarding appellant's criminal activity, an entrapment plan was then set up. The same was made specifically to test the veracity of the informant's tip and to subsequently arrest the malefactor if the report is found to be true. [38] The prosecution's evidence positively showed that appellant agreed to sell shabu to the poseur-buyer, who was introduced to him by the male informant. He was, in fact, caught red-handed plying his illegal trade. Thus, the warrantless arrest of the appellant was legal and within the confines of law. In the same breath, it cannot be doubted that the sachet of shabu seized from him during the legitimate buy-bust operation is admissible and was properly admitted in evidence against him.

Appellant's assertion that he was just framed up as the shabu seized from him was planted evidence so he can be prosecuted for the illegal sale thereof finds no support in evidence.

Denial or frame up is a standard defense ploy in most prosecutions for violation of the Dangerous Drugs Law. As such, it has been viewed by the court with disfavor for it can just as easily be concocted. [39] It should not accord a redoubtable sanctuary to a person accused of drug dealing unless the evidence of such frame up is clear and convincing. [40] Without proof of any intent on the part of the police officers to falsely impute appellant in the commission of a crime, the presumption of regularity in the performance of official duty and the principle that the findings of the trial court on the credibility of witnesses are entitled to great respect, deserve to prevail over the bare denials and self-serving claims of appellant that he had been framed up. [41] Neither can appellant's claim of alleged extortion by the police operatives be entertained. Absent any proof, appellant's assertion of extortion allegedly committed by the police officers could not be successfully interposed. It remains one of those standard, worn-out, and impotent excuses of malefactors prosecuted for drug offenses. What appellant could have done was to prove his allegation and not just casually air it. [42]

In this case, appellant failed to substantiate such defense. Other than his self-serving allegation, no other evidence whether testimonial or documentary has been adduced by him to strengthen his claim. No one was ever presented by the defense to corroborate the version of events proffered by the appellant. Hence, appellant's defense of bare denial or frame up is highly unacceptable.

As a last ditch effort to exonerate himself, appellant even avows that the marked money used during the buy-bust operation was not shown to have been previously recorded in the police blotter, which allegedly paralyzed the cause of the prosecution.

The case cited by appellant, i.e., *People v. Fulgarillas*, [43] in support of the aforesaid allegation is not applicable in the present case. In *People v. Fulgarillas*, the poseur-buyer was never presented as a witness, so, the court held that the testimonies of the rest of the members of the buy-bust team are merely hearsay. There was even no testimony that when the appellant therein handed the stuff to the poseur-buyer, the latter in turn handed the marked money. The only evidence therein that could prove the sale transaction of illicit drug was the marked money but the records did not show that the markings thereon were previously blotted. Thus, the Court held therein that "[t]he act of blotting is the correct and regular procedure by which the regularity of the preparation of marked money may be established. Without such blotter, all attempts at establishing regularity remains dubious." [44]

Such was not the case here since the poseur-buyer herein, i.e., PO2 Gallano, was presented by the prosecution as a witness. Accordingly, the principle enunciated in *People v. Fulgarillas* finds no application in this case. To repeat, the testimony of PO2 Gallano clearly showed how the sale transaction between him and the appellant was consummated. It started the moment PO2 Gallano was introduced by their male informant to appellant and expressed his intention to buy shabu, until the time appellant handed him the one piece plastic sachet containing white crystalline substance, proven to be shabu, in exchange to the four (4) pieces of P500.00 peso bills marked money amounting to P2,000.00 that PO2 Gallano handed to appellant.

As aptly observed by the Court of Appeals, the testimony of PO2 Gallano was corroborated by PO2 Boiser, the former's immediate back up. The testimonies of the said prosecution witnesses were likewise supported by other pieces of evidence, to wit: (1) the one piece plastic sachet containing white crystalline substance seized from appellant, which was identified in court by PO2 Gallano to be the same object sold to him by appellant; and (2) the marked money itself consisting of four (4) pieces of P500 peso bills amounting to P2,000.00, which was also identified by PO2 Gallano in the course of his testimony before the court a quo.

Granting *arguendo* that the marked money was not previously recorded in the police blotter, the same is not fatal to the prosecution's case primarily because the poseur-buyer testified in regards to his transaction with the appellant coupled with the presentation of the drug seized from the latter.

This Court held that neither law nor jurisprudence requires the presentation of any of the money used in a buy-bust operation, much less is it required that the boodle money be marked. The only elements necessary to consummate the crime is proof that the illicit transaction took place, coupled with the presentation in court of the corpus delicti or the illicit drug as evidence. [45] Both elements were satisfactorily proven in the present case. There is also no rule that requires the police to use only marked money in buy-bust operations. This Court has in fact ruled that failure to use marked money or to present it in evidence is not material since the sale cannot be essentially disproved by the absence thereof. Its non-presentation does not create a hiatus in the prosecution's evidence for as long as the sale of the illegal drugs is adequately established and the substance itself is presented before the court. [46]

Given the foregoing, it is with more reason that failure to previously record in the police blotter the marked money used in the buy-bust operation will neither affect nor paralyze the cause of the prosecution considering that, in this case, the poseur-buyer testified and the seized shabu was presented in evidence.

As to penalty. The penalty for the illegal sale of dangerous drugs, like shabu, is explicitly provided for in Section 5, Article II of Republic Act No. 9165, viz:

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 broke in any of such transactions. [Emphasis supplied].

It is clear from the foregoing provision that the sale of any dangerous drug, like shabu, regardless of its quantity and purity, carries with it the penalty of life imprisonment to death and a fine ranging from P500,000.00 to P10,000,000.00. [47] In view, however, of the effectivity of Republic Act No. 9346, [48] the imposition of the supreme penalty of death has been proscribed. [49] Accordingly, the penalty applicable to appellant shall only be life imprisonment and fine without eligibility for parole. This Court, therefore, sustains the penalty of imprisonment and fine imposed upon appellant by the lower courts.

WHEREFORE, premises considered, the Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 02603 dated 23 September 2008, finding herein appellant guilty beyond reasonable doubt in violation of Section 5, Article II of Republic Act No. 9165 is hereby AFFIRMED.

SO ORDERED.

Velasco, Jr.,[*] (Acting Chairperson), Leonardo-De Castro, Bersamin,**] and Del Castillo, JJ., concur.

[*] Per Special Order No. 1003, Associate Justice Presbitero J. Velasco, Jr. is designated as Acting Chairperson of the First Division.

**] Per Special Order No. 1000, Associate Justice Lucas P. Bersamin is designated as Additional Member in lieu of Chief Justice Renato C. Corona who is on official leave.

[1] Penned by Associate Justice Sixto C. Marella, Jr. with Associate Justices Amelita G. Tolentino and Japar B. Dimaampao, concurring. Rollo, pp. 2-14.

[2] Penned by Judge Zosimo V. Escano. CA rollo, pp. 7-11.

[3] 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 or such transactions.

[4] Otherwise known as "Comprehensive Dangerous Drugs Act of 2002."

[5] Records, pp. 1, 10.

[6] SEC. 11. Possession of Dangerous Drugs. - 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 possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x x

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

(1) x x x

(2) 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 opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

[7] Records, p. 1.

[8] Id. at 10.

[9] Per Order dated 4 April 2005. Id. at 12.

[10] Per Order dated 2 June 2005. Id. at 16.

[11] Now Taguig City.

[12] Per Order dated 16 August 2005. Records, p. 22.

[13] Id. at 192.

[14] CA Decision dated 23 September 2008. Rollo, p. 3.

[15] Records, p. 193.

[16] Per Order dated 16 August 2005. Records, p. 22. A careful perusal of the said Physical Science Report No. D-143-05 also known as Chemistry Report No. D-143-05 dated 24 February 2005 revealed that it was subscribed and sworn to before Administering Officer, Police Inspector Alejandro C. De Guzman.

[17] Testimony of PO2 Nemesio Gallano. TSN, 21 November 2005, pp. 4-17.

[18] Id. at 18-20, 39-40 and 58; Testimony of PO2 Darwin Boiser. TSN, 31 January 2006, pp. 12, 18, 28-29 and 60.

[19] Id. at 21-38; Id. at 15-28.

[20] Id. at 39-43 and 54; Id. at 27-31 and 41-44.

[21] Id. at 43-48; Id. at 32-39.

[22] Records, p. 22.

[23] Testimony of appellant. TSN, 9 August 2006, pp. 4-6.

[24] Id. at 6-19.

[25] CA rollo, p. 11.

[26] Id. at 12.

[27] Brief for the Accused-Appellant. CA rollo, p. 23.

[28] Rollo, pp. 7-9 and pp. 13-14.

- [29] *People v. Andres*, G.R. No. 193184, 7 February 2011.
- [30] *People v. Gonzales*, 430 Phil. 504, 513 (2002).
- [31] *People v. Requiz*, G.R. No. 130922, 19 November 1999, 318 SCRA 635, 647.
- [32] Testimony of PO2 Nemesio Gallano. TSN, 21 November 2005, p. 45.
- [33] *Teodosio v. Court of Appeals*, G.R. No. 124346, 8 June 2004, 431 SCRA 194, 207.
- [34] G.R. No. 185848, 16 August 2010, 628 SCRA 328, 341.
- [35] G.R. No. 181747, 26 September 2008, 566 SCRA 571, 594.
- [36] *People v. Sembrano*, *supra* note 34 at 341.
- [37] *People v. Juatan*, G.R. No. 104378, 20 August 1996, 260 SCRA 532, 538.
- [38] *People v. Gonzales*, *supra* note 30 at 513.
- [39] *People v. Chua Uy*, 384 Phil. 70, 86 (2000).
- [40] *People v. Lising*, G.R. No. 125510, 21 July 1997, 275 SCRA 804, 811.
- [41] *People v. Chua*, G.R. No. 133789, 23 August 2001, 363 SCRA 562, 582-583.
- [42] *Id.*
- [43] G.R. No. 91160, 4 August 1992, 212 SCRA 76.
- [44] *Id.* at 81.
- [45] *People v. Gonzales*, *supra* note 30 at 514.
- [46] *People v. Beriamente*, 418 Phil. 229, 237 (2001).
- [47] *People v. Sembrano*, *supra* note 34 citing *People v. Serrano*, G.R. No. 179038, 6 May 2010, 620 SCRA 327, 345.
- [48] Also known as "An Act Prohibiting the Imposition of Death Penalty in the Philippines."
- [49] *People v. Sembrano*, *supra* note 34.

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