

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. RENE ESMA Y JOVEN, RESPONDENT.

G.R. No. 250979. January 11, 2023

Ponente: INTING, J.

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INTING, J.:

Before the Court is a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court assailing the Consolidated Decision[2] dated November 22, 2019 of the Court of Appeals (CA) in CA-G.R. CEB SP No. 12227. The CA affirmed the Joint Order[3] dated July 30, 2018 of Branch 8, Regional Trial Court (RTC), Tacloban City that approved Rene Esma y Joven's (respondent) plea bargain to a lower offense: from violation of Sections 5[4] and 11,[5] Article II of Republic Act No. (RA) 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, to violation of Section 12[6] thereof.

The Antecedents

The public prosecutor charged respondent with violation of Sections 5 and 11, Article II of RA 9165, in two (2) Informations,[7] the dispositive portions of which read:

Criminal Case No. R-TAC-15-00331-CR

That on or about the 23rd day of September 2015 in the City of Tacloban, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without any lawful authority did then and there willfully, unlawfully, and feloniously sell and deliver one (1) piece heat-sealed transparent plastic sachet containing white crystalline substance. "shabu", a dangerous drug weighing 0.0416 gram, to poseur-buyer IO1 SILAS S. AURELIA, a member of the PDEA, in exchange of two (2) pieces five hundred peso bills with serial numbers WH107980 and DY517709, marked money.

Contrary to law.[8]

Criminal Case No. R-TAC-15-00332-CR

That on or about the 23rd day of September 2015 in the City of Tacloban, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without any lawful authority did then and there willfully, unlawfully, and feloniously have in his possession and control two (2) heat-sealed transparent plastic sachets containing white crystalline substance known as shabu weighing a total of 0.0694 gram, a dangerous drug.

Contrary to law.[9]

Respondent was charged with: (a) selling one heat-sealed transparent plastic sachet containing 0.0416 grams of white crystalline substance; and (b) possessing two heat-sealed transparent sachets containing 0.0694 grams of white crystalline substance which were later confirmed to be shabu.[10]

During the trial, respondent filed a Motion to Allow Accused to Plea Bargain[11] dated July 21, 2018 praying that he be allowed to plea to the lower offense of "Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs" under Section 12, Article II of RA 9165 in lieu of Illegal Sale and Illegal

Possession of Dangerous Drugs under Sections 5 and 11, respectively, Article II of RA 9165.

The prosecution opposed respondent's motion.[12] It averred that under Department of Justice (DOJ) Department Circular No. 27,[13] where the offense charged is violation of Section 5, Article II of RA 9165 and the quantity of shabu is less than five grams, the acceptable plea bargain is violation of Section 11, Article II of RA 9165. As for Criminal Case No. R-TAC-15-00332-CR, where respondent was charged with violation of Section 11, Article II of RA 9165, the prosecution requested for time to study the motion to plea bargain because trial on the merits had already commenced.[14]

Ruling of the RTC

Finding the plea bargain to be in accord with the rationale behind the law and the wisdom of A.M. No. 18-03-16-SC,[15] or the Adoption of the Plea Bargaining Framework in Drugs Cases, the RTC issued a Joint Order[16] dated July 30, 2018 approving it. The RTC held that the Rules drafted by the Philippine Judges Association and adopted by the Court precisely adhere to the purposes of RA 9165. It emphasized that the Rules mandate a drug dependency examination; and that thereafter, the accused shall undergo rehabilitation and counseling as a condition to plea bargaining.[17]

The RTC ruled that the prosecution's opposition failed to show that allowing plea bargaining would negate the purposes for which RA 9165 was enacted. On the contrary, it held that a resort to plea bargain would benefit public order as it would result in respondent's conviction and he will be given the chance to be rehabilitated and reintegrated into the mainstream society as a productive individual.[18]

The dispositive portion of the RTC Joint Order provides:

WHEREFORE, over the vehement objection of the prosecution, the court finds the plea-bargaining to be in accord with [the] rationale of the law and the wisdom of A.M. No. 18-03-16-SC. Consequently, the plea--bargaining is approve[d] subject to the following conditions, to wit:

- a. The accused shall undergo [drug dependency examination (DDE)] at the [Eastern Visayas Regional Medical Center]. The latter to submit a report on it thereafter. The Jail Warden of BJMP is directed to bring the accused to such facility for the requisite examination before the next hearing;
- b. Depending on the result of the DDE, the accused shall undergo rehabilitation, whether out of patient or in house as recommended or counseling if the accused turns out negative for drug dependency.

Let, therefore, the accused be re-arraigned on January 22, 2019 at 8:30 o'clock in the morning under the original Informations qualified by the approved lesser offenses as plea bargained. Counsels are notified in open court. Accused to be brought along by the jail warden on said date. Silas Aurelia is likewise notified.

SO ORDERED.[19]

The public prosecutor filed a Motion for Reconsideration,[20] but the RTC denied it in its Order[21] dated August 30, 2018. Consequently, the People, represented by the Office of the Solicitor General (OSG), filed a Petition for Certiorari[22] under Rule 65 of the Rules of Court before the CA asserting that the RTC gravely abused its discretion in approving respondent's motion to plea bargain.

Ruling of the CA

On November 22, 2019, the CA rendered the assailed Consolidated Decision[23] upholding the RTC's approval of respondent's plea bargain. The CA disposed of the case as follows:

WHEREFORE, for want of merit, the Court RESOLYES to DISMISS the following petitions:

x x x x

7. CA-G.R. CEB SP. No. 12227

x x x x

SO ORDERED.[24]

The CA pointed out that the power and authority to promulgate the rules of procedure is lodged exclusively with the Supreme Court. It cited OCA Circular No. 80-2019[25] which stresses that plea bargaining is always addressed to the sound discretion of the judge, guided by the Court's issuances, such as A.M. No. 18-03-16-SC. Thus, it ruled that the RTC did not gravely abuse its discretion when it approved respondent's plea bargain.

Hence, the present petition.

Issues

1. Whether the CA seriously erred in disregarding the principles of mutuality and consensuality in plea bargaining agreements.
2. Whether the approval of the plea bargaining agreement over the objection of the prosecution violated petitioner's right to procedural due process.

Our Ruling

After a perusal of the records of the case, the Court resolves to deny the petition for review on certiorari for failure of petitioner to show that the CA committed a reversible error in affirming the findings of the RTC approving respondent's plea bargain.

The OSG argues as follows: First, its consent is an indispensable requirement in plea bargaining and to suggest otherwise would relegate the acceptance of a plea bargain offer to a mere ministerial duty on the part of petitioner and the RTC.[26] Second, failure to obtain its consent will effectively render nugatory the requirement of consent expressly contained in Section 2,[27] Rule 116 of the Rules of Court, rendering inutile the spirit of plea bargaining. Third, the approval of the plea bargaining agreement without the prosecution's consent violates the latter's right to procedural due process.

The Court is not convinced.

At the outset, the Court takes judicial notice of DOJ Department Circular No. 18[28] dated May 10, 2022, which effectively revoked DOJ Circular No. 27. Under the recent DOJ Circular No. 18, where the subject of the illegal sale is 0.01 gram to .99 gram of shabu, the accused may plea to the lesser offense of Illegal Possession of Drug Paraphernalia under Section 12, Article II of RA 9165. This is the same with the plea bargaining framework in A.M. No. 18-03-16-SC.

Thus, the acceptable plea bargain for the Illegal Sale of Dangerous Drugs[29] and paragraph 3 of Section 11 or Illegal Possession of Dangerous Drugs[30] is Section 12 or Illegal Possession of Equipment, Instrument, Apparatus and other Paraphernalia for Dangerous Drugs for which the penalty of six (6) months and one (1) day to four (4) years and a fine ranging from P10,000.00 to P50,000.00 is imposed.

In the case, respondent prayed that he be allowed to plea bargain to the lower offense under Section 12, Article II of RA 9165 in lieu of the aforementioned charges, i.e., Illegal Sale and Illegal Possession of Dangerous Drugs. Undeniably, respondent's plea bargain is in accordance with A.M. No. 18-03-16-SC and DOJ Circular No. 18.

While the Court takes judicial notice of the efforts of the DOJ to amend DOJ Circular No. 27 to conform to the Court's framework for plea bargaining in drugs cases as set forth in A.M. No. 18-03-16-SC, it bears emphasizing that plea bargaining in criminal cases is a rule of procedure that falls within the exclusive rule-making power of

the Court under Section 5(5),^[31] Article VIII of the 1987 Constitution.^[32]

Also, while the issuance of DOJ Circular No. 18 has admittedly rendered moot the issues in the present case, the Court is not precluded from examining and ruling on the merits thereof especially if: (1) there is a need to stress the exclusive rule-making power of the Court; (2) the decision will guide the bench and the bar in resolving issues concerning plea bargaining agreements in drugs cases; and (3) the issue is capable of repetition yet evading judicial review.

As correctly held by the CA, the power and authority to promulgate the rules of procedure, such as the procedure on plea bargaining, is lodged exclusively with the Court. It is no longer shared with the executive and legislative departments.^[33]

The Court is mindful that in *Sayre v. Xenos*^[34] (*Sayre*), the constitutionality of DOJ Department Circular No. 27 was upheld and found to be in consonance with the plea bargaining framework in A.M. No. 18-03-16-SC. However, it was clarified that DOJ Department Circular No. 27 merely serves as an internal guideline for prosecutors to observe before they may give their consent to the proposed plea bargains. The Court declared that the circular does not in any way repeal, alter, or modify the plea bargaining framework in A.M. No. 18-03-16-SC; and if it did, it would have violated the Court's exclusive power to promulgate the rules of procedure, including the procedure on plea bargaining. The Court likewise reiterated the discretionary authority of the trial courts to grant or deny the proposals for plea bargain.^[35]

Likewise, in *People v. Reafor*^[36] (*Reafor*), the Court voided the RTC order granting therein accused Edwin C. Reafor's (*Reafor*) motion to plea bargain from the charge of Section 5, Article II of RA 9165 to Section 12, Article II of RA 9165 because the latter's plea of guilty to a lesser offense was made without the prosecution's consent.^[37] In contrast to the present case, the RTC in *Reafor* immediately granted *Reafor*'s Motion to Plea Bargain despite the opposition of the prosecution. Then, in no time, the RTC rendered judgment convicting *Reafor* based on his motion to plead guilty to a lesser offense.^[38]

Here, the RTC considered the submissions of both parties before issuing the Joint Order approving the plea bargain in accordance with the rationale behind the law and the wisdom of A.M. No. 18-03-16-SC.

Notably, the Court in *Reafor* emphasized that although a plea bargain requires the mutual agreement of the parties, it is subject to the approval of the trial court; and the acceptance of an offer to plead guilty to a lesser offense is not demandable by the accused as a matter of right because it is a matter addressed entirely to the sound discretion of the trial court.^[39] Citing *Sayre*, the Court held:

This notwithstanding, in the recent case of *Sayre v. Xenos* (*Sayre*), the Court ruled in favor of the validity of DOJ Circular No. 27, holding that the same does not contravene the rule-making authority of the Court, viz.:

In this petition, A.M. No. 18-03-16-SC is a rule of procedure established pursuant to the rule-making power of the Supreme Court that serves as a framework and guide to the trial courts in plea bargaining violations of [RA] 9165.

Nonetheless, a plea bargain still requires mutual agreement of the parties and remains subject to the approval of the court. The acceptance of an offer to plead guilty to a lesser offense is not demandable by the accused as a matter of right but is a matter addressed entirely to the sound discretion of the trial court.

xxx xxx xxx

The use of the word "may" signifies that the trial court has discretion whether to allow the accused to make a plea of guilty to a lesser offense. x x x

Taking into consideration the requirements in pleading guilty to a lesser offense, We find it proper to treat the

refusal of the prosecution to adopt the acceptable plea bargain for the charge of Illegal Sale of Dangerous Drugs provided in A.M. No. 18-03-16-SC as a continuing objection that should be resolved by the RTC. This harmonizes the constitutional provision on the rule-making power of the Court under the Constitution and the nature of plea bargaining in Dangerous Drugs cases. DOJ Circular No. 27 did not repeal, alter or modify the Plea Bargaining Framework in A.M. No. 18-03-16-SC.

x x x x[40] (Emphases and underscoring in the original.)

As can be gleaned in Reafor, the prosecution's opposition to the motion to plea bargain of the accused should be treated as a continuing objection that should be resolved by the trial court. The decision to deny or sustain the prosecution's objection to the plea bargaining offer of the accused is still subject to the trial court's sound discretion.

Finally, in the recent consolidated cases of *People v. Montierro*,^[41] *Baldadera v. People*,^[42] *Re: Letter of the Philippine Judges Association Expressing its Concern over the Ramifications of the Decisions*^[43] and *RE: Letter of Associate Justice Diosdado M. Peralta on the Suggested Plea Bargaining Framework Submitted by the Philippine Judges Association*,^[44] the Court underscored its crucial role in checking and balancing the exercise of the powerful machinery of the State and came up with the following clarificatory guidelines for plea bargaining in drugs cases, viz.:

- Offers for plea bargaining must be initiated in writing by way of a formal written motion filed by the accused in court.
- The lesser offense which the accused proposes to plead guilty to must necessarily be included in the offense charged.
- Upon receipt of the proposal for plea bargaining that is compliant with the provisions of the Plea Bargaining Framework in Drugs Cases, the judge shall order that a drug dependency assessment be administered. If the accused admits drug use, or denies it but is found positive after a drug dependency test, then he/she shall undergo treatment and rehabilitation for a period of not less than six (6) months. Said period shall be credited to his/her penalty and the period of his/her after-care and follow-up program if the penalty is still unserved. If the accused is found negative for drug use/dependency, then he/she will be released on time served, otherwise, he/she will serve his/her sentence in jail minus the counselling period at rehabilitation center.
- As a rule, plea bargaining requires the mutual agreement of the parties and remains subject to the approval of the court. Regardless of the mutual agreement of the parties, the acceptance of the offer to plead guilty to a lesser offense is not demandable by the accused as a matter of right but is a matter addressed entirely to the sound discretion of the court.
- Though the prosecution and the defense may agree to enter into a plea bargain, it does not follow that the courts will automatically approve the proposal. Judges must still exercise sound discretion in granting or denying plea bargaining, taking into account the relevant circumstances, including the character of the accused.
- The court shall not allow plea bargaining if the objection to the plea bargaining is valid and supported by evidence to the effect that:
 - the offender is a recidivist, habitual offender, known in the community as a drug addict and a troublemaker, has undergone rehabilitation but had a relapse, or has been charged many times; or
 - when the evidence of guilt is strong.
- Plea bargaining in drugs cases shall not be allowed when the proposed plea bargain does not conform to the Court-issued Plea Bargaining Framework in Drugs Cases.

- Judges may overrule the objection of the prosecution if it is based solely on the ground that the accused's plea bargaining proposal is inconsistent with the acceptable plea bargain under any internal rules or guidelines of the DOJ, though in accordance with the plea bargaining framework issued by the Court, if any.
- If the prosecution objects to the accused's plea bargaining proposal due to the circumstances enumerated in item no. 5, the trial court is mandated to hear the prosecution's objection and rule on the merits thereof. If the trial court finds the objection meritorious, it shall order the continuation of the criminal proceedings.
- If an accused applies for probation in offenses punishable under RA No. 9165, other than for illegal drug trafficking or pushing under Section 5 in relation to Section 24 thereof, then the law on probation shall apply.[45]

Finding respondent's plea to be in accordance with DOJ Circular No. 18, A.M. No. 18-03-16-SC, and the above-stated guidelines, the Court finds no reason to reverse and set aside the assailed CA Consolidated Decision.

WHEREFORE, the petition is DENIED. The Consolidated Decision dated November 22, 2019 of the Court of Appeals in CA-G.R. CEB SP No. 12227 is AFFIRMED in toto.

SO ORDERED.

Caguioa, (Chairperson), Gaerlan, and Dimaampao, JJ., concur.
Singh, J., see dissenting opinion.

[1] Rollo, pp. 12-35.

[2] Id. at 41-88. Penned by Associate Justice Gabriel T. Ingles with Associate Justices Marilyn B. Lagura-Yap and Carlito B. Calpatura, concurring.

[3] Id. at 100-103.

[4] Section 5 of Republic Act No. (RA) 9165 provides:

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

[5] Section 11 of RA 9165 provides:

SECTION 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

(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, MOMA 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.

[6] Section 12 of RA 9165 provides:

SECTION 12. Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs. — The penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from Ten thousand pesos (P10,000.00) to Fifty thousand pesos (P50,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess or have under his/her control any equipment, instrument, apparatus and other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body: Provided, That in the case of medical practitioners and various professionals who are required to carry such equipment, instrument, apparatus and other paraphernalia in the practice of their profession, the Board shall prescribe the necessary implementing guidelines thereof.

[7] Rollo, pp. 89-90 and 91-92.

[8] Id. at 89.

[9] Id. at 91.

[10] Id. at 61.

[11] Id. at 95-97.

[12] See Comment to Motion for Plea Bargaining dated July 26, 2018, id. at 98-99.

[13] Re: Amended Guidelines on Plea Bargaining for Republic Act No. 9165 otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," dated June 26, 2018.

[14] Rollo, p. 99.

[15] Entitled, "Adoption of the Plea Bargaining Framework in Drugs Cases," approved on April 10, 2018.

[16] Rollo, pp. 100-103.

[17] Id. at 101.

[18] Id. at 102.

[19] Id. at 102-103.

[20] Id. at 104-105.

[21] Id. at 106-107.

[22] Id. at 108-121.

[23] Id. at 41-88.

[24] Id. at 86-87.

[25] With the subject, "Minute Resolution dated April 2, 2019 in A.M. No. 18-03-16-SC entitled, Re: Letter of Associate Justice Diosdado M. Peralta on the Suggested Plea-Bargaining Framework Submitted by the Philippine Judges Association," dated May 30, 2019.

[26] Rollo, p. 25.

[27] Section 2, Rule 116 of the Rules of Court provides:

SEC. 2. Plea of guilty to a lesser offense. — At arraignment, the accused, with the consent of the offended party and the prosecutor, may be allowed by the trial court to plead guilty to a lesser offense which is necessarily included in the offense charged. After arraignment but before trial, the accused may still be allowed to plead guilty to said lesser offense after withdrawing his plea of not guilty. No amendment of the complaint or information is necessary.

[28] Revised Amended Guidelines on Plea Bargaining for Republic Act No. 9165, Otherwise Known as the Comprehensive Dangerous Drugs Act of 2002.

[29] .01 gram to .99 grams of shabu and .01 gram to 9.99 grams of marijuana

[30] where quantity of shabu, opium, morphine, heroin, cocaine is less than 5 grams

[31] Section 5(5), Rule VIII of the 1987 Philippine Constitution provides:

Section 5. The Supreme Court shall have the following powers:

x x x x

(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the integrated bar, and legal assistance to the under-privileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights.

Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

[32] See *Estipona v. Judge Lobrigo*, 816 Phil. 789 (2017).

[33] *Echegaray v. Secretary of Justice*, 361 Phil. 73, 88 (1999).

[34] G.R. Nos. 244413 & 244415-16, February 18, 2020.

[35] *Id.*

[36] G.R. No. 247575, November 16, 2020.

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] *Id.*, citing *Sayre v. Xenos*, *supra* note 34.

[41] G.R. No. 254564/G.R. No. 254974, July 26, 2022.

[42] G.R. No. 254974, July 26, 2022.

[43] A.M. No. 21-07-16-SC, July 26, 2022

[44] A.M. No. 18-03-16-SC, July 26, 2022.

[45] *Id.*

DISSENTING OPINION

SINGH, J.:

The Court is faced with the issue of the propriety of approving an offer to plea bargain that does not bear the conformity of the public prosecutor. In this case, the accused Rene Esma y Joven (Esma) was charged with violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165. During trial, Esma filed a Motion to Allow Accused to Plea Bargain (Motion), praying that he be allowed to plead to the lower offense contained under Section 12, Article II of RA 9165. The prosecution opposed this Motion, arguing that Department of Justice (DOJ) Circular No. 27 provides that the acceptable plea bargain for violation of Section 5, Article II of R.A. No. 9165 is violation of Section 11, Article II of R.A. No. 9165. The Regional Trial Court (RTC) approved the plea bargain, subject to the conduct of a drug dependency examination and ordered the re-arraignment of Esma. The Court of Appeals (CA) upheld the RTC's approval of Esma's plea bargain.

The ponencia affirms the CA Decision, finding that the same is in accord with the relevant circulars and guidelines pertaining to plea bargaining.

With due respect, consistent with my Concurring and Dissenting Opinion in the consolidated cases of *People v. Montierro*,^[1] *Baldadera v. People*,^[2] *Re: Letter of the Philippine Judges Association Expressing its Concern over the Ramifications of the Decisions*,^[3] and *Re: Letter of Associate Justice Diosdado M. Peralta on the Suggested Plea Bargaining Framework Submitted by the Philippine Judges Association*,^[4] I disagree with the finding that the conformity of the public prosecutor to a plea bargaining proposal is optional and may be disregarded by the trial courts.

Plea bargaining in criminal cases is a process where the accused and the prosecution work out a mutually satisfactory disposition of the case subject to court approval.^[5] It usually involves the defendant pleading guilty to a lesser offense or to only one or some of the counts of a multi-count indictment in return for a lighter sentence than that for the graver charge.^[6]

Section 2, Rule 116 of the Rules of Criminal Procedure provides:

SECTION 2. Plea of guilty to a lesser offense. — At arraignment, the accused, with the consent of the offended party and the prosecutor, may be allowed by the trial court to plead guilty to a lesser offense which is necessarily included in the offense charged. After arraignment but before trial, the accused may still be allowed to plead guilty to said lesser offense after withdrawing his plea of not guilty. No amendment of the complaint or information is necessary.^[7]

Based on the foregoing, the basic requisites of plea bargaining are: (a) consent of the offended party; (b) consent of the prosecutor; (c) plea of guilty to a lesser offense which is necessarily included in the offense charged; and (d) approval of the court.^[8] The acceptance of an offer to plead guilty to a lesser offense is not demandable by the accused as a matter of right but is a matter addressed entirely to the sound discretion of the trial court.^[9] In fact, the provision highlights the need to arrive at a proposal that is mutually acceptable to the offended party and the public prosecutor.

However, as clarified by the Court in *People v. Majingcar*,^[10] as there is no private offended party in drugs cases, the consent of the prosecutor is the operative act which vests discretion upon the court to allow or reject the accused's proposal to plead guilty to a lesser offense.^[11] Thus, where this consent is withheld, no such discretion gets vested in the Court.^[12] Stated otherwise, where the prosecution does not consent to the accused's proposal to plea bargain, there is nothing for the trial court to approve. Absent a valid plea bargain, the occasion to exercise

its discretion on whether to accept the plea bargaining proposal and whether to render judgment on the basis thereof never arises.

The importance of the public prosecutor's conformity to the proposal to plea bargain was previously highlighted by the Court in *Estipona v. Lobrigo (Estipona)*,^[13] where the Court explained that the accused does not have any vested right to compel the prosecution to accept the plea bargain. And even when the prosecution conforms to the plea bargaining proposal, the trial court is not automatically bound by such consent and is given wide discretion to approve or disapprove the plea bargain. *Estipona* extensively discussed nature and essence of the plea bargaining process as follows:

In this jurisdiction, plea bargaining has been defined as "a process whereby the accused and the prosecution work out a mutually satisfactory disposition of the case subject to court approval." There is give-and-take negotiation common in plea bargaining. The essence of the agreement is that both the prosecution and the defense make concessions to avoid potential losses. Properly administered, plea bargaining is to be encouraged because the chief virtues of the system - speed, economy, and finality - can benefit the accused, the offended party, the prosecution, and the court.

Considering the presence of mutuality of advantage, the rules on plea bargaining neither create a right nor take away a vested right. Instead, it operates as a means to implement an existing right by regulating the judicial process for enforcing rights and duties recognized by substantive law and for justly administering remedy and redress for a disregard or infraction of them.

The decision to plead guilty is often heavily influenced by the defendant's appraisal of the prosecution's case against him and by the apparent likelihood of securing leniency should a guilty plea be offered and accepted. In any case, whether it be to the offense charged or to a lesser crime, a guilty plea is a "serious and sobering occasion" inasmuch as it constitutes a waiver of the fundamental rights to be presumed innocent until the contrary is proved, to be heard by himself and counsel, to meet the witnesses face to face, to bail (except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong), to be convicted by proof beyond reasonable doubt, and not to be compelled to be a witness against himself.

Yet a defendant has no constitutional right to plea bargain. No basic rights are infringed by trying him rather than accepting a plea of guilty; the prosecutor need not do so if he prefers to go to trial. Under the present Rules, the acceptance of an offer to plead guilty is not a demandable right but depends on the consent of the offended party and the prosecutor, which is a condition precedent to a valid plea of guilty to a lesser offense that is necessarily included in the offense charged. The reason for this is that the prosecutor has full control of the prosecution of criminal actions; his duty is to always prosecute the proper offense, not any lesser or graver one, based on what the evidence on hand can sustain.^[14]

In relation thereto, it must be clarified that the power to prosecute crimes chiefly pertains to the Executive Department of the Government, and that the prosecution is given a wide latitude to determine which cases to charge against whom:

The prosecution of crimes pertains to the Executive Department of the Government whose principal power and responsibility are to see to it that our laws are faithfully executed. A necessary component of the power to execute our laws is the right to prosecute their violators. The right to prosecute vests the public prosecutors with a wide range of discretion – the discretion of what and whom to charge, the exercise of which depends on a smorgasbord of factors that are best appreciated by the public prosecutors.

The public prosecutors are solely responsible for the determination of the amount of evidence sufficient to establish probable cause to justify the filing of appropriate criminal charges against a respondent. Theirs is also the quasi-judicial discretion to determine whether or not criminal cases should be filed in court.^[15]

While it is true that plea bargaining in criminal cases is a rule of procedure which falls within the Court's exclusive domain,[16] the Court must strike a balance between the exercise of its judicial power and exhibiting deference towards the exercise of prosecutorial discretion. Prosecutorial discretion must necessarily include autonomy to decide whether to consent to a plea bargain. As explained by the Court in *Estipona*:

[Courts] normally must defer to prosecutorial decisions as to whom to prosecute. The reasons for judicial deference are well known. Prosecutorial charging decisions are rarely simple. In addition to assessing the strength and importance of a case, prosecutors also must consider other tangible and intangible factors, such as government enforcement priorities. Finally, they also must decide how best to allocate the scarce resources of a criminal justice system that simply cannot accommodate the litigation of every serious criminal charge. Because these decisions "are not readily susceptible to the kind of analysis the courts are competent to undertake," we have been "properly hesitant to examine the decision whether to prosecute."

The plea is further addressed to the sound discretion of the trial court, which may allow the accused to plead guilty to a lesser offense which is necessarily included in the offense charged. The word may denotes an exercise of discretion upon the trial court on whether to allow the accused to make such plea. Trial courts are exhorted to keep in mind that a plea of guilty for a lighter offense than that actually charged is not supposed to be allowed as a matter of bargaining or compromise for the convenience of the accused.[17]

Where the prosecution does not consent to the proposal to plea bargain, the Court in *Sayre v. Hon. Xenos*[18] clarified that the same shall be treated as a continuing objection that must be resolved by the trial court.[19]

"Nonetheless, a plea bargain still requires mutual agreement of the parties and remains subject to the approval of the court. The acceptance of an offer to plead guilty to a lesser offense is not demandable by the accused as a matter of right but is a matter addressed entirely to the sound discretion of the trial court.

x x x.

The use of the word 'may' signifies that the trial court has discretion whether to allow the accused to make a plea of guilty to a lesser offense. Moreover, plea bargaining requires the consent of the accused, offended party, and the prosecutor. It is also essential that the lesser offense is necessarily included in the offense charged.

Taking into consideration the requirements in pleading guilty to a lesser offense, We find it proper to treat the refusal of the prosecution to adopt the acceptable plea bargain for the charge of Illegal Sale of Dangerous Drugs provided in A.M. No. 18-03-16-SC as a continuing objection that should be resolved by the RTC. This harmonizes the constitutional provision on the rule-making power of the Court under the Constitution and the nature of plea bargaining in Dangerous Drugs cases. DOJ Circular No. 27 did not repeal, alter, or modify the Plea Bargaining Framework in A.M. No. 18-03-16-SC." [20]

The indispensable nature of the prosecution's conformity to the accused's proposal for a plea bargain cannot be overemphasized. If a mutual agreement between the prosecutor and the accused cannot be reached, a valid proposal to plea bargain cannot be submitted for resolution of the court. Absent a valid plea bargain, the issue of whether the plea bargaining proposal must be accepted and whether judgment should be rendered on the basis thereof never arises. The Court thus remains bound to resolve the issues presented prior to the filing of the offer of plea bargain, and the continuation of the trial proceedings is imperative.

In this case, there was no valid plea bargain presented for approval of the trial court. Esma's plea of guilt to a lesser offense was strongly opposed by the prosecution. As discussed above, the consent of both the public prosecutor and the offended party is a condition precedent to a valid plea of guilty to a lesser offense. Without the prosecution's conformity, the offer of plea bargain is void. Accordingly, the judgment made by the RTC approving the void plea bargain is also void ab initio and could not have attained finality. Necessarily, the

judgment of conviction rendered against Esma must be vacated, and the criminal case must be remanded to the RTC for further proceedings, in consideration of the of the issues presented prior to the filing of the offer of plea bargain, without violating Esma's right to double jeopardy.

In view of the foregoing, I respectfully DISSENT from the ponencia's resolution to deny the Petition for Review on Certiorari, assailing the Consolidated Decision, dated November 22, 2019, of the CA, which affirmed the Joint Order, dated July 30, 2018, of the RTC approving Esma's plea bargain to a lower offense.

I respectfully submit that the Petition for Review on Certiorari should be GRANTED and given due course. The Consolidated Decision, dated November 22, 2019 of the Court of Appeals in CA-G.R. CEB SP No. 12227 must be REVERSED. The Joint Order, dated July 30, 2018, must also be ANNULLED. Accordingly, Criminal Case No. R-TAC-15-00331-CR and Criminal Case No. R-TAC-15-00332-CR must both be remanded to Branch 8, Regional Trial Court, Tacloban City for further proceedings, as indicated herein.

[1] G.R. No. 254654, July 26, 2022.

[2] G.R. No. 254974, July 26, 2022.

[3] A.M. No. 21-07-16-SC, July 26, 2022.

[4] A.M. No. 18-03-16-SC, July 26, 2022.

[5] *People v. Borras*, G.R. No. 250295, March 15, 2021.

[6] *Id.*

[7] RULES OF COURT, Rule 116, Sec. 2; emphasis and underscoring supplied.

[8] *People v. Reafor*, G.R. No. 247575, November 16, 2020.

[9] *Sayre v. Hon. Xenos*, G.R. Nos. 244413 & 244415-16, February 18, 2020.

[10] G.R. No. 249629, March 15, 2021.

[11] *Id.*

[12] *Id.*

[13] 816 Phil. 789 (2017).

[14] *Id.*

[15] *Ampatuan, Jr. v. De Lima*, 708 Phil. 153 (2013).

[16] See *People v. Montierro*, G.R. No 254654, July 26, 2022 and *Estipona v. Lobrigo*, 816 Phil. 789 (2017).

[17] *Supra* note 13.

[18] *Supra* note 9.

[19] *Id.*

[20] *Id.* Emphasis and underscoring supplied; citations omitted.

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