

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARTIN SIMON Y SUNGA, RESPONDENT.*G.R. No. 93028. July 29, 1994*

Ponente: REGALADO, J.

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Herein accused-appellant Martin Simon y Sunga was charged on November 10, 1988 with a violation of Section 4, Article II of Republic Act No. 6425, as amended, otherwise known as the Dangerous Drugs Act of 1972, under an indictment alleging that on or about October 22, 1988, at Barangay Sto. Cristo, Guagua, Pampanga, he sold four tea bags of marijuana to a Narcotics Command (NARCOM) poseur-buyer in consideration of the sum of P40.00, which tea bags, when subjected to laboratory examination, were found positive for marijuana.[1]

Eventually arraigned with the assistance of counsel on March 2, 1989, after his rearrest following his escape from Camp Olivas, San Fernando, Pampanga where he was temporarily detained,[2] he pleaded not guilty. He voluntarily waived his right to a pre-trial conference,[3] after which trial on the merits ensued and was duly concluded.

I

The evidence on record shows that a confidential informant, later identified as a NARCOM operative, informed the police unit at Camp Olivas, San Fernando, Pampanga, of the illegal drug activities of a certain "Alyas Pusa" at Sto. Cristo, Guagua, Pampanga. Capt. Francisco Bustamante, Commanding Officer of the 3rd Narcotics Regional Unit in the camp, then formed a buy-bust team composed of Sgt. Buenaventura Lopez, Pfc. Virgilio Villaruz and Sgt. Domingo Pejoro, all members of the same unit. After securing marked money from Bustamante, the team, together with their informant, proceeded to Sto. Cristo after they had coordinated with the police authorities and barangay officers thereof. When they reached the place, the confidential informer pointed out appellant to Lopez who consequently approached appellant and asked him if he had marijuana. Appellant answered in the affirmative and Lopez offered to buy two tea bags. Appellant then left and, upon returning shortly thereafter, handed to Lopez two marijuana tea bags and Lopez gave him the marked money amounting to P40.00 as payment. Lopez then scratched his head as a pre-arranged signal to his companions who were stationed around ten to fifteen meters away, and the team closed in on them. Thereupon, Villaruz, who was the head of the back-up team, arrested appellant. The latter was then brought by the team to the 3rd Narcotics Regional Unit at Camp Olivas on board a jeep and he was placed under custodial investigation, with Sgt. Pejoro as the investigator.[4]

Pfc. Villaruz corroborated Lopez' testimony, claiming that he saw the deal that transpired between Lopez and the appellant. He also averred that he was the one who confiscated the marijuana and took the marked money from appellant.[5]

Sgt. Domingo Pejoro, for his part, declared that although he was part of the buy-bust team, he was stationed farthest from the rest of the other members, that is, around two hundred meters away from his companions. He did

not actually see the sale that transpired between Lopez and appellant but he saw his teammates accosting appellant after the latter's arrest. He was likewise the one who conducted the custodial investigation of appellant wherein the latter was apprised of his rights to remain silent, to information and to counsel. Appellant, however, orally waived his right to counsel.[6]

Pejoro also claimed having prepared Exhibit "G," the "Receipt of Property Seized/Confiscated" which appellant signed, admitting therein the confiscation of four tea bags of marijuana dried leaves in his possession. Pejoro likewise informed the court below that, originally, what he placed on the receipt was that only one marijuana leaf was confiscated in exchange for P20.00. However, Lopez and Villaruz corrected his entry by telling him to put "two," instead of "one" and "40," instead of "20". He agreed to the correction since they were the ones who were personally and directly involved in the purchase of the marijuana and the arrest of appellant.[7]

Dr. Pedro S. Calara, a medical officer at Camp Olivas, examined appellant at 5:30 P.M. of the day after the latter's apprehension, and the results were practically normal except for his relatively high blood pressure. The doctor also did not find any trace of physical injury on the person of appellant. The next day, he again examined appellant due to the latter's complaint of gastro-intestinal pain. In the course of the examination, Dr. Calara discovered that appellant has a history of peptic ulcer, which causes him to experience abdominal pain and consequently vomit blood. In the afternoon, appellant came back with the same complaint but, except for the gastro-intestinal pain, his physical condition remained normal.[8]

As expected, appellant tendered an antipodal version of the attendant facts, claiming that on the day in question, at around 4:30 P.M., he was watching television with the members of his family in their house when three persons, whom he had never met before suddenly arrived. Relying on the assurance that they would just inquire about something from him at their detachment, appellant boarded a jeep with them. He was told that they were going to Camp Olivas, but he later noticed that they were taking a different route. While on board, he was told that he was a pusher so he attempted to alight from the jeep but he was handcuffed instead. When they finally reached the camp, he was ordered to sign some papers and, when he refused, he was boxed in the stomach eight or nine times by Sgt. Pejoro. He was then compelled to affix his signature and fingerprints on the documents presented to him. He denied knowledge of the P20.00 or the dried marijuana leaves, and insisted that the twenty-peso bill came from the pocket of Pejoro. Moreover, the reason why he vomited blood was because of the blows he suffered at the hands of Pejoro. He admitted having escaped from the NARCOM office but claimed that he did so since he could no longer endure the maltreatment to which he was being subjected. After escaping, he proceeded to the house of his uncle, Bienvenido Sunga, at San Matias, Guagua, reaching the place at around 6:30 or 7:30 P.M. There, he consulted a quack doctor and, later, he was accompanied by his sister to the Romana Pangan District Hospital at Floridablanca, Pampanga where he was confined for three days.[9]

Appellant's brother, Norberto Simon, testified to the fact that appellant was hospitalized at Floridablanca, Pampanga after undergoing abdominal pain and vomiting of blood. He likewise confirmed that appellant had been suffering from peptic ulcer even before the latter's arrest.[10] Also, Dr. Evelyn Gomez-Aguas, a resident physician of Romana Pangan District Hospital, declared that she treated appellant for three days due to abdominal pain, but her examination revealed that the cause for this ailment was appellant's peptic ulcer. She did not see any sign of slight or serious external injury, abrasion or contusion on his body.[11]

On December 4, 1989, after weighing the evidence presented, the trial court rendered judgment convicting appellant for a violation of Section 4, Article II of Republic Act No. 6425, as amended, and sentencing him to suffer the penalty of life imprisonment, to pay a fine of twenty thousand pesos and to pay the costs. The four tea bags of marijuana dried leaves were likewise ordered confiscated in favor of the Government.[12]

Appellant now prays the Court to reverse the aforementioned judgment of the lower court, contending in his assignment of errors that the latter erred in (1) not upholding his defense of "frame-up," (2) not declaring Exhibit "G" (Receipt of Property Seized/Confiscated) inadmissible in evidence, and (3) convicting him of a violation of the Dangerous Drugs Act.[13]

At the outset, it should be noted that while the People's real theory and evidence is to the effect that appellant actually sold only two tea bags of marijuana dried leaves, while the other two tea bags were merely confiscated subsequently from his possession,[14] the latter not being in any way connected with the sale, the information alleges that he sold and delivered four tea bags of marijuana dried leaves.[15] In view thereof, the issue presented for resolution in this appeal is merely the act of selling the two tea bags allegedly committed by appellant, and does not include the disparate and distinct issue of illegal possession of the other two tea bags which separate offense is not charged herein.[16]

To sustain a conviction for selling prohibited drugs, the sale must be clearly and unmistakably established.[17] To sell means to give, whether for money or any other material consideration.[18] It must, therefore, be established beyond doubt that appellant actually sold and delivered two tea bags of marijuana dried leaves to Sgt. Lopez, who acted as the poseur-buyer, in exchange for two twenty-peso bills.

After an assiduous review and calibration of the evidence adduced by both parties, we are morally certain that appellant was caught in flagrante delicto engaging in the illegal sale of prohibited drugs. The prosecution was able to prove beyond a scintilla of doubt that appellant, on October 22, 1988, did sell two tea bags of marijuana dried leaves to Sgt. Lopez. The latter himself creditably testified as to how the sale took place and his testimony was amply corroborated by his teammates. As between the straightforward, positive and corroborated testimony of Lopez and the bare denials and negative testimony of appellant, the former undeniably deserves greater weight and is more entitled to credence.

We are aware that the practice of entrapping drug traffickers through the utilization of poseur-buyers is susceptible to mistake, harassment, extortion and abuse.[19] Nonetheless, such causes for judicial apprehension and doubt do not obtain in the case at bar. Appellant's entrapment and arrest were not effected in a haphazard way, for a surveillance was conducted by the team before the buy-bust operation was effected.[20] No ill motive was or could be attributed to them, aside from the fact that they are presumed to have regularly performed their official duty.[21] Such lack of dubious motive coupled with the presumption of regularity in the performance of official duty, as well, as the findings of the trial court on the credibility of witnesses, should prevail over the self-serving and uncorroborated claim of appellant of having been framed,[22] erected as it is upon the mere shifting sands of an alibi. To top it all, appellant was caught red-handed delivering prohibited drugs, and while there was a delimited chance for him to controvert the charge, he does not appear to have plausibly done so.

When the drug seized was submitted to the Crime Laboratory Service of the then Philippine Constabulary-Integrated National Police (PC-INP) at Camp Olivas for examination, P/Cpl. Marlyn Salangad, a forensic chemist therein,[23] confirmed in her Technical Report No. NB-448-88 that the contents of the four tea bags confiscated from appellant were positive for and had a total weight of 3.8 grams of marijuana.[24] Thus, the corpus delicti of the crime had been fully proved with certainty and conclusiveness.[25]

Appellant would want to make capital of the alleged inconsistencies and improbabilities in the testimonies of the prosecution witnesses. Foremost, according to him, is the matter of who really confiscated the marijuana tea bags from him since, in open court, Pejoro asserted that he had nothing to do with the confiscation of the marijuana, but in the aforementioned "Receipt of Property Seized/Confiscated," he signed it as the one who seized the same.[26]

Suffice it to say that whether it was Villaruz or Pejoro who confiscated the marijuana will not really matter since such is not an element of the offense with which appellant is charged. What is unmistakably clear is that the marijuana was confiscated from the possession of appellant. Even, assuming arguendo that the prosecution committed an error on who actually seized the marijuana from appellant, such an error or discrepancy refers only to a minor matter and, as such, neither impairs the essential integrity of the prosecution evidence as a whole nor reflects on the witnesses' honesty.[27] Besides, there was clearly a mere imprecision of language since Pejoro obviously meant that he did not take part in the physical taking of the drug from the person of appellant, but he participated in the legal seizure or confiscation thereof as the investigator of their unit.

Next, appellant adduces the argument that the twenty-peso bills allegedly confiscated from him were not powdered for finger-printing purposes contrary to the normal procedure in buy-bust operations.[28] This omission has been satisfactorily explained by Pfc. Virgilio Villaruz in his testimony, as follows:

"Q: Is it the standard operating procedure of your unit that in conducting such operation you do not anymore provide a powder (sic) on the object so as to determine the thumbmark or identity of the persons taking hold of the object?

A: We were not able to put powder on these denominations because we are lacking that kind of material in our office since that item can be purchased only in Manila and only few are producing that, sir.

x x x

Q: Is it not a fact that your office is within (the) P.C. Crime Laboratory, CIS, as well as the office of NICA?

A: Our office is only adjacent to those offices but we cannot make a request for that powder because they, themselves, are using that in their own work, sir."[29]

The foregoing explanation aside, we agree that the failure to mark the money bills used for entrapment purposes can under no mode of rationalization be fatal to the case of the prosecution because the Dangerous Drugs Act punishes "any person who, unless authorized by law, shall sell, administer, deliver, give away to another, distribute, dispatch in transit or transport any prohibited drug, or shall act as a broker in any of such transactions." [30] The dusting of said bills with phosphorescent powder is only an evidentiary technique for identification purposes, which identification can be supplied by other species of evidence.

Again, appellant contends that there was neither a relative of his nor any barangay official or civilian to witness the seizure. He decries the lack of pictures taken before, during and after his arrest. Moreover, he was not reported to or booked in the custody of any barangay official or police authorities.[31] These are absurd disputations. No law or jurisprudence requires that an arrest or seizure, to be valid, be witnessed by a relative, a barangay official or any other civilian, or be accompanied by the taking of pictures. On the contrary, the police enforcers having caught appellant in flagrante delicto, they were not only authorized but were also under the obligation to effect a warrantless arrest and seizure.

Likewise, contrary to appellant's contention, there was an arrest report prepared by the police in connection with his apprehension. Said Booking Sheet and Arrest Report[32] states, inter alia, that "suspect was arrested for selling two tea bags of suspected marijuana dried leaves and the confiscation of another two tea bags of suspected marijuana dried leaves." Below these remarks was affixed appellant's signature. In the same manner, the receipt for the seized property, hereinbefore mentioned, was signed by appellant wherein he acknowledged the confiscation of the marked bills from him.[33]

However, we find and hereby declare the aforementioned exhibits inadmissible in evidence. Appellant's conformance to these documents are declarations against interest and tacit admissions of the crime charged. They

were obtained in violation of his right as a person under custodial investigation for the commission of an offense, there being nothing in the records to show that he was assisted by counsel.[34] Although appellant manifested during the custodial investigation that he waived his right to counsel, the waiver was not made in writing and in the presence of counsel,[35] hence whatever incriminatory admission or confession may be extracted from him, either verbally or in writing, is not allowable in evidence.[36] Besides, the arrest report is self-serving and hearsay and can easily be concocted to implicate a suspect.

Notwithstanding the objectionability of the aforesaid exhibits, appellant cannot thereby be extricated from his predicament since his criminal participation in the illegal sale of marijuana has been sufficiently proven. The commission of the offense of illegal sale of prohibited drugs requires merely the consummation of the selling transaction[37] which happens the moment the buyer receives the drug from the seller.[38] In the present case, and in light of the preceding discussion, this sale has been ascertained beyond any peradventure of doubt.

Appellant then asseverates that it is improbable that he would sell marijuana to a total stranger.[39] We take this opportunity to once again reiterate the doctrinal rule that drug-pushing, when done on a small scale as in this case, belongs to that class of crimes that may be committed at any time and in any place.[40] It is not contrary to human experience for a drug pusher to sell to a total stranger,[41] for what matters is not an existing familiarity between the buyer and seller but their agreement and the acts constituting the sale and delivery of the marijuana leaves.[42] While there may be instances where such sale could be improbable, taking into consideration the diverse circumstances of person, time and place, as well as the incredibility of how the accused supposedly acted on that occasion, we can safely say that those exceptional particulars are not present in this case.

Finally, appellant contends that he was subjected to physical and mental torture by the arresting officers which caused him to escape from Camp Olivas the night he was placed under custody.[43] This he asserts to support his explanation as to how his signatures on the documents earlier discussed were supposedly obtained by force and coercion.

The doctrine is now too well embedded in our jurisprudence that for evidence to be believed, it must not only proceed from the mouth of a credible witness but must be credible in itself such as the common experience and observation of mankind can approve as probable under the circumstances.[44] The evidence on record is bereft of any support for appellant's allegation of maltreatment. Two doctors, one for the prosecution[45] and the other for the defense,[46] testified on the absence of any tell-tale sign or indication of bodily injury, abrasions or contusions on the person of appellant. What is evident is that the cause of his abdominal pain was his peptic ulcer from which he had been suffering even before his arrest.[47] His own brother even corroborated that fact, saying that appellant has had a history of bleeding peptic ulcer.[48]

Furthermore, if it is true that appellant was maltreated at Camp Olivas, he had no reason whatsoever for not divulging the same to his brother who went to see him at the camp after his arrest and during his detention there.[49] Significantly, he also did not even report the matter to the authorities nor file appropriate charges against the alleged malefactors despite the opportunity to do so[50] and with the legal services of counsel being available to him. Such omissions funnel down to the conclusion that appellant's story is a pure fabrication.

These, and the events earlier discussed, soundly refute his allegations that his arrest was baseless and premeditated for the NARCOM agents were determined to arrest him at all costs.[51] Premeditated or not, appellant's arrest was only the culmination, the final act needed for his isolation from society and it was providential that it came about after he was caught in the very act of illicit trade of prohibited drugs. Accordingly, this opinion could have concluded on a note of affirmance of the judgment of the trial court. However, Republic Act No. 6425, as amended, was further amended by Republic Act No. 7659 effective December 31, 1993,[52]

which supervenience necessarily affects the original disposition of this case and entails additional questions of law which we shall now resolve.

II

The provisions of the aforesaid amendatory law, pertinent to the adjudication of the case at bar, are to this effect:

"SEC. 13. Sections 3, 4, 5, 7, 8 and 9 of Art. II of Republic Act No. 6425, as amended, known as the Dangerous Drugs Act of 1972, are hereby amended to read as follows:

x x x

'SEC. 4. Sale, Administration, Delivery, Distribution and Transportation of Prohibited Drugs. - The penalty of reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall sell, administer, deliver, give away to another, distribute, dispatch in transit or transport any prohibited drug, or shall act as a broker in any of such transactions.'

x x x

"SEC. 17. Section 20, Article IV of Republic Act No. 6425, as amended, known as the Dangerous Drugs Act of 1972, is hereby amended to read as follows:

'Sec. 20. Application of Penalties, Confiscation and Forfeiture of the Proceeds or Instrument of the Crime. - The penalties for offenses under Sections 3, 4, 7, 8 and 9 of Article II and Sections 14, 14-A, 15 and 16 of Article III of this Act shall be applied if the dangerous drugs involved is in any of the following quantities:

x x x

5. 750 grams or more of indian hemp or marijuana

x x x

'Otherwise, if the quantity involved is less than the foregoing quantities, the penalty shall range from prision correccional to reclusion perpetua depending upon the quantity.' "

1. Considering that herein appellant is being prosecuted for the sale of four tea bags of marijuana with a total weight of only 3.8 grams and, in fact, stands to be convicted for the sale of only two of those tea bags, the initial inquiry would be whether the patently favorable provisions of Republic Act No. 7659 should be given retroactive effect to entitle him to the lesser penalty provided thereunder, pursuant to Article 22 of the Revised Penal Code.

Although Republic Act No. 6425 was enacted as a special law, albeit originally amendatory and in substitution of the previous Articles 190 to 194 of the Revised Penal Code,[53] it has long been settled that by force of Article 10 of said Code the beneficent provisions of Article 22 thereof applies to and shall be given retrospective effect to crimes punished by special laws.[54] The exception in said article would not apply to those convicted of drug offenses since habitual delinquency refers to convictions for the third time or more of the crimes of serious or less serious physical injuries, robo, hurto, estafa or falsification.[55]

Since, obviously, the favorable provisions of Republic Act No. 7659 could neither have then been involved nor invoked in the present case, a corollary question would be whether this court, at the present stage, can sua sponte apply the provisions of said Article 22 to reduce the penalty to be imposed on appellant. That issue has likewise been resolved in the cited case of *People vs. Moran, et al.*, ante., thus:

"x x x. The plain precept contained in article 22 of the Penal Code, declaring the retroactivity of penal laws in so far as they are favorable to persons accused of a felony, would be useless and nugatory if the courts of

justice were not under obligation to fulfill such duty, irrespective of whether or not the accused has applied for it, just as would also all provisions relating to the prescription of the crime and the penalty."

If the judgment which could be affected and modified by the reduced penalties provided in Republic Act No. 7659 has already become final and executory or the accused is serving sentence thereunder, then practice, procedure and pragmatic considerations would warrant and necessitate the matter being brought to the judicial authorities for relief under a writ of habeas corpus.[56]

2. Probably through oversight, an error on the matter of imposable penalties appears to have been committed in the drafting of the aforesaid law, thereby calling for and necessitating judicial reconciliation and craftsmanship.

As applied to the present case, Section 4 of Republic Act No. 6425, as now further amended, imposes the penalty of reclusion perpetua to death and a fine ranging from P500,000.00 to P10,000,000.00 upon any person who shall unlawfully sell, administer, deliver, give away, distribute, dispatch in transit or transport any prohibited drug. That penalty, according to the amendment to Section 20 of the law, shall be applied if what is involved is 750 grams or more of indian hemp or marijuana; otherwise, if the quantity involved is less, the penalty shall range from prision correccional to reclusion perpetua depending upon the quantity.

In other words, there is here an overlapping error in the provisions on the penalty of reclusion perpetua by reason of its dual imposition, that is, as the maximum of the penalty where the marijuana is less than 750 grams, and also as the minimum of the penalty where the marijuana involved is 750 grams or more. The same error has been committed with respect to the other prohibited and regulated drugs provided in said Section 20. To harmonize such conflicting provisions in order to give effect to the whole law,[57] we hereby hold that the penalty to be imposed where the quantity of the drugs involved is less than the quantities stated in the first paragraph shall range from prision correccional to reclusion temporal, and not reclusion perpetua. This is also concordant with the fundamental rule in criminal law that all doubts should be construed in a manner favorable to the accused.

3. Where, as in this case, the quantity of the dangerous drug is only 3.8 grams, hence covered by the imposable range of penalties under the second paragraph of Section 20, as now modified, the law provides that the penalty shall be taken from said range "depending upon the quantity" of the drug involved in the case. The penalty in said second paragraph constitutes a complex one composed of three distinct penalties, that is, prision correccional, prision mayor, and reclusion temporal. In such a situation, the Code provides that each one shall form a period, with the lightest of them being the minimum, the next as the medium, and the most severe as the maximum period.[58]

Ordinarily, and pursuant to Article 64 of the Code, the mitigating and aggravating circumstances determine which period of such complex penalty shall be imposed on the accused. The peculiarity of the second paragraph of Section 20, however, is its specific mandate, above quoted, that the penalty shall instead depend upon the quantity of the drug subject of the criminal transaction.[59] Accordingly, by way of exception to Article 77 of the Code and to subserve the purpose of Section 20 of Republic Act No. 7659, each of the aforesaid component penalties shall be considered as a principal imposable penalty depending on the quantity of the drug involved. Thereby, the modifying circumstances will not altogether be disregarded. Since each component penalty of the total complex penalty will have to be imposed separately as determined by the quantity of the drug involved, then the modifying circumstances can be used to fix the proper period of that component penalty, as shall hereafter be explained.

It would, therefore, be in line with the provisions of Section 20 in the context of our aforesaid disposition thereon that, unless there are compelling reasons for a deviation, the quantities of the drugs enumerated in its second paragraph be divided into three, with the resulting quotient, and double or treble the same, to be respectively the bases for allocating the penalty proportionately among the three aforesaid periods according to the severity

thereof. Thus, if the marijuana involved is below 250 grams, the penalty to be imposed shall be prison correccional; from 250 to 499 grams, prison mayor; and 500 to 749 grams, reclusion temporal. Parenthetically, fine is imposed as a conjunctive penalty only if the penalty is reclusion perpetua to death.[60]

Now, considering the minimal quantity of the marijuana subject of the case at bar, the penalty of prison correccional is consequently indicated but, again, another preliminary and cognate issue has first to be resolved.

4. Prison correccional has a duration of 6 months and 1 day to 6 years and, as a divisible penalty, it consists of three periods as provided in the text of and illustrated in the table provided by Article 76 of the Code. The question is whether or not in determining the penalty to be imposed, which is here to be taken from the penalty of prison correccional, the presence or absence of mitigating, aggravating or other circumstances modifying criminal liability should be taken into account.

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 prison correccional, in its technical sense under the Code, it would consequently be both illogical and absurd to posit otherwise. More on this later.

For the nonce, we hold that in the instant case the imposable penalty under Republic Act No. 6425, as amended by Republic Act No. 7659, is prison correccional, to be taken from the medium period thereof pursuant to Article 64 of the Revised Penal Code, there being no attendant mitigating or aggravating circumstance.

5. At this juncture, a clarificatory discussion of the developmental changes in the penalties imposed for offenses under special laws would be necessary.

Originally, those special laws, just as was the conventional practice in the United States but differently from the penalties provided in our Revised Penal Code and its Spanish origins, provided for one specific penalty or a range of penalties with definitive durations, such as imprisonment for one year or for one to five years but without division into periods or any technical statutory cognomen. This is the special law contemplated in and referred to at the time laws like the Indeterminate Sentence Law[61] were passed during the American regime.

Subsequently, a different pattern emerged whereby a special law would direct that an offense thereunder shall be punished under the Revised Penal Code and in the same manner provided therein. Inceptively, for instance,

Commonwealth Act No. 303[62] penalizing non-payment of salaries and wages with the periodicity prescribed therein, provided:

"SEC. 4. Failure of the employer to pay his employee or laborer as required by section one of this Act, shall prima facie be considered a fraud committed by such employer against his employee or laborer by means of false pretenses similar to those mentioned in article three hundred and fifteen, paragraph four, sub-paragraph two (a) of the Revised Penal Code and shall be punished in the same manner as therein provided."[63]

Thereafter, special laws were enacted where the offenses defined therein were specifically punished by the penalties as technically named and understood in the Revised Penal Code. These are exemplified by Republic Act No. 1700 (Anti-Subversion Act) where the penalties ranged from arresto mayor to death;[64] Presidential Decree No. 1612 (Anti-Fencing Decree) where the penalties run from arresto mayor to prision mayor; and Presidential Decree No. 1866 (illegal possession and other prohibited acts involving firearms), the penalties wherefor may involve prision mayor, reclusion temporal, reclusion perpetua or death.

Another variant worth mentioning is Republic Act No. 6539 (Anti-Carnapping Act of 1972) where the penalty is imprisonment for not less than 14 years and 8 months and not more than 17 years and 4 months, when committed without violence or intimidation of persons or force upon things; not less than 17 years and 4 months and not more than 30 years, when committed with violence against or intimidation of any person, or force upon things; and life imprisonment to death, when the owner, driver or occupant of the carnapped vehicle is killed.

With respect to the first example, where the penalties under the special law are different from and are without reference or relation to those under the Revised Penal Code, there can be no suppletory effect of the rules for the application of penalties under said Code or by other relevant statutory provisions based on or applicable only to said rules for felonies under the Code. In this type of special law, the legislative intent is clear.

The same exclusionary rule would apply to the last given example, Republic Act No. 6539. While it is true that the penalty of 14 years and 8 months to 17 years and 4 months is virtually equivalent to the duration of the medium period of reclusion temporal, such technical term under the Revised Penal Code is not given to that penalty for carnapping. Besides, the other penalties for carnapping attended by the qualifying circumstances stated in the law do not correspond to those in the Code. The rules on penalties in the Code, therefore, cannot suppletorily apply to Republic Act No. 6539 and special laws of the same formulation.

On the other hand, the rules for the application of penalties and the correlative effects thereof under the Revised Penal Code, as well as other statutory enactments founded upon and applicable to such provisions of the Code, have suppletory effect to the penalties under the former Republic Act No. 1700 and those now provided under Presidential Decrees Nos. 1612 and 1866. While these are special laws, the fact that the penalties for offenses thereunder are those provided for in the Revised Penal Code lucidly reveals the statutory intent to give the related provisions on penalties for felonies under the Code the corresponding application to said special laws, in the absence of any express or implicit proscription in these special laws. To hold otherwise would be to sanction an indefensible judicial truncation of an integrated system of penalties under the Code and its allied legislation, which could never have been the intent of Congress.

In *People vs. Macatanda*,[65] a prosecution under a special law (Presidential Decree No. 533, otherwise known as the Anti-Cattle Rustling Law of 1974), it was contended by the prosecution that Article 64, paragraph 5, of the Revised Penal Code should not apply to said special law. We said therein that --

"We do not agree with the Solicitor General that P.D. 533 is a special law entirely distinct from and unrelated to the Revised Penal Code. From the nature of the penalty imposed which is in terms of the classification and duration of penalties as prescribed in the Revised Penal Code, which is not for penalties as are ordinarily

imposed in special laws, the intent seems clear that P.D. 533 shall be deemed as an amendment of the Revised Penal Code, with respect to the offense of theft of large cattle (Art. 310) or otherwise to be subject to applicable provisions thereof such as Article 104 of the Revised Penal Code x x x. Article 64 of the same Code should, likewise, be applicable, x x x." (Italics supplied.)

More particularly with regard to the suppletory effect of the rules on penalties in the Revised Penal Code to Republic Act No. 6425, in this case involving Article 63(2) of the Code, we have this more recent pronouncement:

"x x x. Pointing out that as provided in Article 10 the provisions of the Revised Penal Code shall be 'supplementary' to special laws, this Court held that where the special law expressly grants to the court discretion in applying the penalty prescribed for the offense, there is no room for the application of the provisions of the Code. x x x

"The Dangerous Drugs Act of 1972, as amended by P.D. No. 1623, contains no explicit grant of discretion to the Court in the application of the penalty prescribed by the law. In such case, the court must be guided by the rules prescribed by the Revised Penal Code concerning the application of penalties which distill the 'deep legal thought and centuries of experience in the administration of criminal laws.'" (Emphasis ours.)(66]

Under the aforesaid considerations, in the case of the Dangerous Drugs Act as now amended by Republic Act No. 7659 by the incorporation and prescription therein of the technical penalties defined in and constituting integral parts of the three scales of penalties in the Code,[67] with much more reason should the provisions of said Code on the appreciation and effects of all attendant modifying circumstances apply in fixing the penalty. Likewise, the different kinds or classifications of penalties and the rules for graduating such penalties by degrees should have supplementary effect on Republic Act No. 6425, except if they would result in absurdities as will now be explained.

While not squarely in issue in this case, but because this aspect is involved in the discussion on the role of modifying circumstances, we have perforce to lay down the caveat that mitigating circumstances should be considered and applied only if they affect the periods and the degrees of the penalties within rational limits.

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 prison 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 prison 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.

6. The final query is whether or not the Indeterminate Sentence Law is applicable to the case now before us. Apparently it does, since drug offenses are not included in nor has appellant committed any act which would put him within the exceptions to said law and the penalty to be imposed does not involve reclusion perpetua or death, provided, of course, that the penalty as ultimately resolved will exceed one year of imprisonment.[68] The more important aspect, however, is how the indeterminate sentence shall be ascertained.

It is true that Section 1 of said law, after providing for indeterminate sentence for an offense under the Revised Penal Code, states that "if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same." We hold that this quoted portion of the section indubitably refers to an offense under a special law wherein the penalty imposed was not taken from and is without reference to the Revised Penal Code, as discussed in the preceding illustrations, such that it may be said that the "offense is punished" under that law.

There can be no sensible debate that the aforequoted rule on indeterminate sentence for offenses under special laws was necessary because of the nature of the former type of penalties under said laws which were not included or contemplated in the scale of penalties in Article 71 of the Code, hence there could be no minimum "within the range of the penalty next lower to that prescribed by the Code for the offense," as is the rule for felonies therein. In the illustrative examples of penalties in special laws hereinbefore provided, this rule applied, and would still apply, only to the first and last examples. Furthermore, considering the vintage of Act No. 4103 as earlier noted, this holding is but an application and is justified under the rule of contemporanea expositio.[69]

We repeat, Republic Act No. 6425, as now amended by Republic Act No. 7659, has unqualifiedly adopted the penalties under the Revised Penal Code in their technical terms, hence with their technical signification and effects. In fact, for purposes of determining the maximum of said sentence, we have applied the provisions of the amended Section 20 of said law to arrive at prison correccional and Article 64 of the Code to impose the same in the medium period. Such offense, although provided for in a special law, is now in effect punished by and under the Revised Penal Code. Correlatively, to determine the minimum, we must apply the first part of the aforesaid Section 1 which directs that "in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense." (Italics ours.)

A divergent pedantic application would not only be out of context but also an admission of the hornbook maxim that *qui haeret in litera haeret in cortice*. Fortunately, this Court has never gone only skin-deep in its construction of Act No. 4103 by a mere literal appreciation of its provisions. Thus, with regard to the phrase in Section 2 thereof excepting from its coverage "persons convicted of offenses punished with death penalty or life imprisonment," we have held that what is considered is the penalty actually imposed and not the penalty

imposable under the law,[70] and that reclusion perpetua is likewise embraced therein although what the law states is "life imprisonment."

What irresistibly emerges from the preceding disquisition, therefore, is that under the concurrence of the principles of literal interpretation, which have been rationalized by comparative decisions of this Court; of historical interpretation, as explicated by the antecedents of the law and related contemporaneous legislation; and of structural interpretation, considering the interrelation of the penalties in the Code as supplemented by Act No. 4103 in an integrated scheme of penalties, it follows that the minimum of the indeterminate sentence in this case shall be the penalty next lower to that prescribed for the offense. Thereby we shall have interpreted the seeming ambiguity in Section 1 of Act No. 4103 in such a way as to harmonize laws with laws, which is the best mode of interpretation.[71]

The Indeterminate Sentence Law is a legal and social measure of compassion, and should be liberally interpreted in favor of the accused.[72] The "minimum" sentence is merely a period at which, and not before, as a matter of grace and not of right, the prisoner may merely be allowed to serve the balance of his sentence outside of his confinement.[73] It does not constitute the totality of the penalty since thereafter he still has to continue serving the rest of his sentence under set conditions. That minimum is only the period when the convict's eligibility for parole may be considered. In fact, his release on parole may readily be denied if he is found unworthy thereof, or his reincarceration may be ordered on legal grounds, even if he has served the minimum sentence.

It is thus both amusing and bemusing if, in the case at bar, appellant should be begrudged the benefit of a minimum sentence within the range of *arresto mayor*, the penalty next lower to *prision correccional* which is the maximum range we have fixed through the application of Articles 61 and 71 of the Revised Penal Code. For, with fealty to the law, the court may set the minimum sentence at 6 months of *arresto mayor*, instead of 6 months and 1 day of *prision correccional*. The difference, which could thereby even involve only one day, is hardly worth the creation of an overrated tempest in the judicial teapot.

ACCORDINGLY, under all the foregoing premises, the judgment of conviction rendered by the court *a quo* against accused-appellant Martin Simon y Sunga is **AFFIRMED**, but with the **MODIFICATION** that he should be, as he hereby is, sentenced to serve an indeterminate penalty of six (6) months of *arresto mayor*, as the minimum, to six (6) years of *prision correccional*, as the maximum thereof.

SO ORDERED.

Narvasa, C.J., Cruz, Padilla, Bidin, Romero, Melo, Puno, Vitug, Kapunan, and Mendoza, JJ., concur.
Feliciano and Quason, JJ., join J. Davide, Jr., in his concurring and dissenting opinion.
Bellosillo, J., on leave.

* This case was initially raffled to the Second Division of the Court but due to the novelty and importance of the issues raised on the effects of R.A. No. 7659 in amending R.A. No. 6425, the same was referred to and accepted by the Court en banc pursuant to Circular No. 2-89 and Bar Matter No. 209, as amended.

[1] Original Record, 2; Criminal Case No. G-2320, Regional Trial Court, Branch 51, Guagua, Pampanga.

[2] *Ibid.*, 11.

[3] *Ibid.*, 23.

[4] TSN, April 6, 1989, 5-32.

- [5] Ibid., May 5, 1989, 2.
- [6] Ibid., May 24, 1989, 18; May 5, 1989, 11.
- [7] Ibid., May 24, 1989, 21-24.
- [8] Ibid., June 14, 1989, 3-22.
- [9] Ibid., July 10, 1989, 5-26.
- [10] Ibid., July 17, 1989, 8-16.
- [11] Ibid., August 18, 1989, 36, 41-43, 47-49.
- [12] Original Record, 174-175; per Judge Arsenio P. Roman.
- [13] Brief for Accused-Appellant, 3; Rollo, 54.
- [14] Exhibits F and G, Folder of Exhibits; TSN, July 10, 1989, 53.
- [15] Original Record, 2.
- [16] See *People vs. Salamat*, G.R. No. 103295, August 20, 1993.
- [17] *People vs. Alilin*, G.R. No. 84363, March 4, 1992, 206 SCRA 772.
- [18] See *People vs. Querrer*, G.R. No. 97147, July 15, 1992, 211 SCRA 502.
- [19] *People vs. Lati*, G.R. No. 70393, April 17, 1990, 184 SCRA 336.
- [20] TSN, May 5, 1989, 5.
- [21] Sec. 3(m), Rule 131, Rules of Court.
- [22] See *People vs. Labra*, G.R. No. 98427, November 20, 1992, 215 SCRA 822.
- [23] TSN, August 18, 1989, 3.
- [24] Ibid., id., 12; Exhibit M, Folder of Exhibits.
- [25] *People vs. Celiz, et al.*, G.R. No. 92849, October 20, 1992, 214 SCRA 755.
- [26] Brief for Accused-Appellant, 4-5; Rollo, 55-56.
- [27] *People vs. Fernandez*, G.R. No. 86495, May 13, 1992, 209 SCRA 1.
- [28] Brief for Accused-Appellant, 6; Rollo, 57.
- [29] TSN, May 5, 1989, 7.
- [30] *People vs. Castiller*, G.R. No. 87783, August 6, 1990, 188 SCRA 376.
- [31] Brief for Accused-Appellant, 6-7; Rollo, 57-58.
- [32] Exhibit F, Folder of Exhibits.
- [33] Exhibit G, *ibid.*
- [34] *People vs. Mauyao*, G.R. No. 84525, April 6, 1992, 207 SCRA 732.
- [35] TSN, May 5, 1989, 11.

- [36] Sec. 12(1), Art. III, 1987 Constitution.
- [37] *People vs. Rumeral*, G.R. No. 86320, August 5, 1991, 200 SCRA 194.
- [38] *People vs. Sibug*, G.R. No. 108520, January 24, 1994.
- [39] Brief for Accused-Appellant, 11; Rollo, 62.
- [40] *People vs. Tandoy*, G.R. No. 80505, December 4, 1990, 192 SCRA 28.
- [41] Cf. *People vs. Cina*, G.R. No. 88220, October 1, 1990, 190 SCRA 199.
- [42] *People vs. Consuelo*, G.R. No. 77755, April 18, 1990, 184 SCRA 402.
- [43] TSN, July 10, 1989, 12-13.
- [44] *People vs. Eslaban*, G.R. Nos. 101211-12, February 8, 1993, 218 SCRA 534.
- [45] TSN, June 14, 1989, 22.
- [46] *Ibid.*, August 18, 1989, 48.
- [47] *Ibid.*, July 17, 1989, 15-16.
- [48] *Ibid.*, October 23, 1988, 15-16.
- [49] *Ibid.*, July 17, 1989, 22; October 23, 1988, 15.
- [50] *Ibid.*, July 10, 1989, 26-27.
- [51] Brief for Accused-Appellant, 4; Rollo, 55.
- [52] Sec. 28 of Republic Act No. 7659 provides that it "shall take effect fifteen (15) days after its publication in two (2) national newspapers of general circulation," and it was so published in the December 16, 1993 issues of the Manila Bulletin, Philippine Star, Malaya and Philippine Times Journal.
- [53] Title Five, Crimes Relative to Opium and Other Prohibited Drugs.
- [54] *U.S. vs. Hocbo*, 12 Phil. 304 (1908); *U.S. vs. Parrone*, 24 Phil. 29 (1913); *U.S. vs. Almencion*, 25 Phil. 648 (1913); *People vs. Moran, et al.*, 44 Phil. 387 (1923); *People vs. Parel*, 44 Phil. 437 (1923); *People vs. Tamayo*, 61 Phil. 225 (1935).
- [55] Article 62(5), Revised Penal Code.
- [56] See *Harden vs. Director of Prisons*, 81 Phil. 741 (1948); *Gumabon, et al. vs. Director of the Bureau of Prisons*, L-30026, January 30, 1971, 37 SCRA 420.
- [57] *Lopez and Sons, Inc. vs. Court of Tax Appeals, et al.*, 100 Phil. 850 (1957).
- [58] Article 77, Revised Penal Code.
- [59] This graduated scheme of penalties is not stated with regard and does not apply to the quantities and their penalties provided in the first paragraph, the penalties therein being the same regardless of whether the quantities exceed those specified therein.
- [60] Sec. 4, in relation to Sec. 20, R.A. No. 7659.
- [61] Act No. 4103, effective on December 5, 1933.

[62] Effective on June 9, 1938.

[63] See a similar format in P.D. No. 330 which penalizes the illegal taking of timber and forest products under Arts. 308, 309 and 310 of the Revised Penal Code by reference.

[64] In fact, the penalty for officers or ranking leaders was prision mayor to death, just like the penalty for treason by a resident alien under Article 114 of the Revised Penal Code.

[65] G.R. No. 51368, November 6, 1981, 109 SCRA 35.

[66] *People vs. Tsang Hin Wai, et al.*, G.R. No. 66389, September 8, 1986, 144 SCRA 22. In his sponsorship speech of Senate Bill No. 891 as Chairman of the Special Committee on the Death Penalty, Senator Arturo M. Tolentino made this enlightening explanation as reported in the records of the Senate and which is pertinent to our present discussion: "x x x Article 190, referring to prohibited drugs, actually was repealed by the enactment of a special law referring to drugs. But since we were only amending the Revised Penal Code in this proposed bill or draft, we reincorporated Article 190 in an amended form. x x x It reincorporates and amends Article 190 on the importation, manufacture, sale, administration upon another, or distribution of prohibited drugs, planting or cultivation of any plant, which is a source of prohibited drugs, maintenance of a den, dive or similar place, as defined in the Dangerous Drugs Law" (9th CRP, 1st Regular Session, Vol. 1, No. 71, 12).

[67] See Articles 25, 70 and 71, Revised Penal Code.

[68] Section 2, Act No. 4103, as amended.

[69] Contemporaneous exposition, or construction; a construction drawn from the time when, and the circumstances under which, the subject-matter to be construed, such as a custom or statute, originated (Black's Law Dictionary, 4th ed., 390).

[70] *People vs. Roque, et al.*, 90 Phil. 142 (1951); *People vs. Dimalanta*, 92 Phil. 239 (1952); *People vs. Moises, et al.*, G.R. L-32495, August 13, 1975, 66 SCRA 151.

[71] Interpretare et concordare leges legibus, est optimus interpretandi modus (Black's Law Dictionary, 4th ed., 953).

[72] *People vs. Nang Kay*, 88 Phil. 515 (1951).

[73] 24 C.J.S., Indeterminate Sentence, Sec. 1993, 1217-1218.

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CONCURRING AND DISSENTING OPINION

DAVIDE, JR., J.:

I am still unable to agree with the view that (a) in appropriate cases where the penalty to be imposed would be prision correccional pursuant to the second paragraph of Section 20 of R.A. No. 6425, as amended by Section 17 of R.A. No. 7659, the sentence to be meted out, applying the Indeterminate Sentence Law (Act No. 4103, as amended), should be that whose minimum is within the range of the penalty next lower, i.e., arresto mayor; and (b) the presence of two or more mitigating circumstances not offset by any mitigating circumstances or of a privileged mitigating circumstance shall not reduce the penalty by one or two degrees if the penalty to be imposed, taking into account the quantity of the dangerous drugs involved, would be prision correccional.

I.

The first view is based on the proposition that since R.A. No. 7659 had unqualifiedly adopted the penalties under the Revised Penal Code in their technical terms, hence also their technical signification and effects, then what should govern is the first part of Section 1 of the Indeterminate Sentence Law which directs that:

"in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense."

Elsewise stated, by the adoption of the penalties provided for in the Revised Penal Code for the offenses penalized under the Dangerous Drugs Act (R.A. No. 6425), as amended, the latter offenses would now be considered as punished under the Revised Penal Code for purposes of the Indeterminate Sentence Law.

Section 1 of the Indeterminate Sentence Law (Act No. 4103, as amended by Act No. 4225 and R.A. No. 4203) also provides that:

"if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum prescribed by the same." (Emphasis supplied).

There are, therefore, two categories of offenses which should be taken into account in the application of the Indeterminate Sentence Law: (1) offenses punished by the Revised Penal Code, and (2) offenses punished by other laws (or special laws).

The offenses punished by the Revised Penal Code are those defined and penalized in Book II thereof, which is thus appropriately titled CRIMES AND PENALTIES. To simplify further, a crime is deemed punished under the Revised Penal Code if it is defined by it, and none other, as a crime and is punished by a penalty which is included in the classification of Penalties in Chapter II, Title III of Book I thereof.

On the other hand, an offense is considered punished under any other law (or special law) if it is not defined and penalized by the Revised Penal Code but by such other law.

It is thus clear that an offense is punished by the Revised Penal Code if both its definition and the penalty therefor are found in the said Code, and it is deemed punished by a special law if its definition and the penalty therefor are found in the special law. That the latter imports or borrows from the Revised Penal Code its nomenclature of penalties does not make an offense in the special law punished by or punishable under the Revised Penal Code. The reason is quite simple. It is still the special law that defines the offense and imposes a penalty therefor, although it adopts the Code's nomenclature of penalties. In short, the mere use by a special law of a penalty found in the Revised Penal Code can by no means make an offense thereunder an offense "punished or punishable" by the Revised Penal Code.

Thus, I cannot subscribe to the view that since R.A. No. 7659 had adopted the penalties prescribed by the Revised Penal Code in drug cases, offenses related to drugs should now be considered as punished under the Revised Penal Code. If that were so, then we are also bound, ineluctably, to declare that such offenses are *mala in se* and to apply the Articles of the Revised Penal Code regarding the stages of a felony (Article 6), the nature of participation (Article 16), accessory penalties (Articles 40-45), application of penalties to principals, accomplices, and accessories (Article 46 et seq.), complex crimes (Article 48), and graduation of penalties (Article 61), among others. We cannot do otherwise without being drawn to an inconsistent posture which is extremely hard to justify.

I respectfully submit then that the adoption by the Dangerous Drugs Act of the penalties in the Revised Penal Code does not make an offense under the Dangerous Drugs Act an offense punished by the Revised Penal Code. Consequently, where the proper penalty to be imposed under Section 20 of the Dangerous Drugs Act is prision correccional, then, applying the Indeterminate Sentence Law, the indeterminate sentence to be meted on the accused should be that whose minimum should not be less than the minimum prescribed by the special law (the Dangerous Drugs Act), i.e., not lower than six (6) months and one (1) day of prision correccional.

II.

The majority opinion holds the view that while the penalty provided for in Section 20 of the Dangerous Drugs Act is a complex one composed of three distinct penalties, viz., prision correccional, prision mayor, and reclusion temporal, and that pursuant to Article 77 of the Revised Penal Code, each should form a period, with the lightest of them being the minimum, the next as the medium, and the most severe as the maximum, yet, considering that under the said second paragraph of Section 20 the penalty depends on the quantity of the drug subject of the criminal transaction, then by way of exception to Article 77 of the Revised Penal Code and to subserve the purpose of Section 20, as amended, each of the aforesaid component penalties shall be considered as a principal penalty depending on the quantity of the drug involved. Thereafter, applying the modifying circumstances pursuant to Article 64 of the Revised Penal Code, the proper period of the component penalty shall then be fixed. To illustrate, if by the quantity of the drugs involved (e.g., marijuana below 250 grams) the proper principal penalty should be prision correccional, but there is one mitigating and no aggravating circumstance, then the penalty to be imposed should be prision correccional in its minimum period. Yet, the majority opinion puts a limit to such a rule. It declares:

"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."

Simply put, this rule would allow the reduction from reclusion temporal -- if it is the penalty to be imposed on the basis of the quantity of the drugs involved -- by two degrees, or to prision correccional, if there are two or more mitigating circumstances and no aggravating circumstance is present (paragraph 5, Article 64, Revised Penal Code) or if there is a privileged mitigating circumstance of, say, minority (Article 68, Revised Penal Code), or under circumstances covered by Article 69 of the Revised Penal Code. Yet, if the proper penalty to be imposed is prision mayor, regardless of the fact that a reduction by two degrees is proper, it should only be reduced by one degree because the rule does not allow a reduction beyond prision correccional. Finally, if the proper penalty to be imposed is prision correccional, no reduction at all would be allowed.

I find the justification for the rule to be arbitrary and unfair. It is arbitrary because within the same second paragraph involving the same range of penalty, we both allow and disallow the application of Article 64(5), Article 68, and Article 69 of the Revised Penal Code. The reason for the disallowance, viz., in order not to depreciate the seriousness of drug offenses, is unconvincing because Section 20 of the Dangerous Drugs Act, as amended by R.A. No. 7659, has in fact "depreciated" the seriousness of drug offenses by providing quantity as basis for the determination of the proper penalty and limiting fine only to cases punishable by reclusion perpetua to death. It is unfair because an accused who is found guilty of possessing MORE dangerous drugs -- say 500 to 749 grams of marijuana, in which case the penalty to be imposed would be reclusion temporal -- may only be sentenced to six (6) months and one (1) day of prision correccional minimum because of privileged mitigating

circumstances. Yet, an accused who is found guilty of possession of only one (1) gram of marijuana -- in which case the penalty to be imposed is prision correccional -- would not be entitled to a reduction thereof even if he has the same number of privileged mitigating circumstances as the former has.

Also, if the privileged mitigating circumstance happens to be the minority of the accused, then he is entitled to the reduction of the penalty as a matter of right pursuant to Article 68 of the Revised Penal Code, which reads:

"ART. 68. Penalty to be imposed upon a person under eighteen years of age. -- When the offender is a minor under eighteen years and his case is one coming under the provisions of the paragraph next to the last of Article 80 of this Code, the following rules shall be observed:

1. Upon a person under fifteen but over nine years of age, who is not exempted from liability by reason of the court having declared that he acted with discernment, a discretionary penalty shall be imposed, but always lower by two degrees at least than that prescribed by law for the crime which he committed.
2. Upon a person over fifteen and under eighteen years of age the penalty next lower than that prescribed by law shall be imposed, but always in the proper period."

I do not think that as to the second paragraph of Section 20 of the Dangerous Drugs Act, as amended by Section 17 of R.A. No. 7659, we can be at liberty to apply the Revised Penal Code in one aspect and not to apply it in another.

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