

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MODESTO TEE A.K.A. ESTOY TEE, ACCUSED-APPELLANT.

G.R. Nos. 140546-47. January 20, 2003

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For automatic review is the consolidated judgment[1] of the Regional Trial Court (RTC) of Baguio City, Branch 6, dated September 17, 1999, in Criminal Cases Nos. 15800-R and 15822-R, involving violations of Section 8, Article II, of the Dangerous Drugs Law.[2] Since appellant was acquitted in the second case, we focus on the first case, where appellant has been found guilty and sentenced to death and fined one million pesos.

The decretal portion of the trial court's decision reads:

WHEREFORE, judgment is hereby rendered, as follows:

- In Crim. Case No. 15800-R, the Court finds the accused Modesto Tee guilty beyond reasonable doubt of the offense of illegal possession of marijuana of about 591.81 kilos in violation of Section 8, Article II of RA 6425 as amended by Section 13 of RA 7659 as charged in the Information, seized by virtue of a search warrant and sentences him to the supreme penalty of death and to pay a fine of 1 million pesos without subsidiary imprisonment in case of insolvency.

The 591.81 kilos of marijuana contained in 26 boxes and one yellow sack (Exhibits U-1 to U-27) are ordered forfeited in favor of the State to be destroyed immediately in accordance with law.

- In Crim. Case No. 15822-R, the Court finds that the prosecution failed to prove the guilt of accused Modesto Tee beyond reasonable doubt and hereby acquits him of the charge of illegal possession of marijuana in violation of Section 8, Art. 2 of RA 6425 as amended by Section 13 of RA 7659 as charged in the Information since the marijuana confiscated have to be excluded in evidence as a product of unreasonable search and seizure.

The 336.93 kilos of marijuana contained in 13 sacks and four boxes (Exh. B to S and their component parts) although excluded in evidence as the product(s) of unreasonable search and seizure, are nevertheless ordered forfeited in favor of the State to be destroyed immediately in accordance with law considering that they are prohibited articles.

The City Jail Warden is, therefore, directed to release the accused Modesto Tee in connection with Crim. Case No. 15822-R unless held on other charges.

COST(S) DE OFFICIO.

SO ORDERED.[3]

Appellant is a Chinese national in his forties, a businessman, and a resident of Baguio City. A raid conducted by operatives of the National Bureau of Investigation (NBI) and Philippine National Police Narcotics Command (PNP NARCOM) at premises allegedly leased by appellant and at his residence yielded huge quantities of

marijuana.

On July 20, 1998, appellant moved to quash the search warrant on the ground that it was too general and that the NBI had not complied with the requirements for the issuance of a valid search warrant. The pendency of said motion, however, did not stop the filing of the appropriate charges against appellant. In an information dated July 24, 1998, docketed as Criminal Case No. 15800-R, the City Prosecutor of Baguio City charged Modesto Tee, alias “Estoy Tee,” with illegal possession of marijuana, allegedly committed as follows:

That on or about the 1[st] day of July, 1998 in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully, feloniously and knowingly have in his possession the following, to wit:

- Ninety-two (92) bricks of dried flowering tops separately contained in four (4) boxes; and
 - One hundred fifty-eight (158) bricks, twenty-one (21) blocks, and twenty-three (23) bags of dried flowering tops separately contained in thirteen (13) sacks, with a total weight of 336.93 kilograms; and
 - Six hundred two (602) bricks of dried flowering tops separately contained in twenty-six (boxes) and a yellow sack, weighing 591.81 kilograms,
- all having a grand total weight of 928.74 kilograms, a prohibited drug, without the authority of law to possess, in violation of the above-cited provision of law.

CONTRARY TO LAW.[4]

On August 7, 1998, the prosecution moved to “amend” the foregoing charge sheet “considering that subject marijuana were seized in two (2) different places.”[5]

As a result, the information in Criminal Case No. 15800-R was amended to read as follows:

That on or about the 1[st] day of July, 1998, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully, feloniously and knowingly have in his possession the following, to wit:

- Six hundred two (602) bricks of dried flowering tops separately contained in twenty-six (26) boxes and a yellow sack, weighing 591.81 kilograms

a prohibited drug, without the authority of law to possess, in violation of the above-cited provision of law.

CONTRARY TO LAW.[6]

A separate amended information docketed as Criminal Case No. 15822-R was likewise filed, the accusatory portion of which reads:

That on or about the 1[st] day of July, 1998 in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully, feloniously and knowingly have in his possession the following, to wit:

- Ninety-two (92) bricks of dried flowering tops separately contained in four (4) boxes; and
- hundred fifty-eight (158) bricks, twenty-one (21) blocks, and twenty-three (23) bags of dried flowering tops separately contained in thirteen (13) sacks, with a total weight of 336.93 kilograms;

a prohibited drug, without the authority of law to possess, in violation of the above-cited provision of law.

CONTRARY TO LAW.[7]

On September 4, 1998, the trial court denied the motion to quash the search warrant and ordered appellant's arraignment.

When arraigned in Criminal Cases Nos. 15800-R and 15822-R, appellant refused to enter a plea. The trial court entered a plea of not guilty for him.[8] Trial on the merits then ensued.

The facts of this case, as gleaned from the records, are as follows:

Prosecution witness Danilo Abratique, a Baguio-based taxi driver, and the appellant Modesto Tee are well acquainted with each other, since Abratique's wife is the sister of Tee's sister-in-law.[9]

Sometime in late June 1998, appellant asked Abratique to find him a place for the storage of smuggled cigarettes.[10] Abratique brought appellant to his friend, Albert Ballesteros, who had a house for rent in Bakakeng, Baguio City. After negotiating the terms and conditions, Ballesteros agreed to rent out his place to appellant. Appellant then brought several boxes of purported "blue seal" cigarettes to the leased premises.

Shortly thereafter, however, Ballesteros learned that the boxes stored in his place were not "blue seal" cigarettes but marijuana. Fearful of being involved, Ballesteros informed Abratique. Both later prevailed upon appellant to remove them from the premises.[11]

Appellant then hired Abratique's taxi and transported the boxes of cannabis from the Ballesteros place to appellant's residence at Km. 6, Dontogan, Green Valley, Sto. Tomas, Baguio City.[12]

On June 30, 1998, appellant hired Abratique to drive him to La Trinidad, Benguet on the pretext of buying and transporting strawberries. Upon reaching La Trinidad, however, appellant directed Abratique to proceed to Sablan, Benguet, where appellant proceeded to load several sacks of marijuana in Abratique's taxi. He then asked Abratique to find him a place where he could store the contraband.[13]

Abratique brought appellant to his grandmother's house at No. 27 Dr. Cariño St., QM Subdivision, Baguio City, which was being managed by Abratique's aunt, Nazarea Abreau. Nazarea agreed to rent a room to appellant. Abratique and appellant unloaded and stored there the sacks of marijuana brought from Sablan.[14] Abratique was aware that they were transporting marijuana as some of the articles in the sacks became exposed in the process of loading.[15]

Eventually, Abratique and Nazarea were bothered by the nature of the goods stored in the rented room. She confided to her daughter, Alice Abreau Fianza, about their predicament. As Alice Fianza's brother-in-law, Edwin Fianza, was an NBI agent, Alice and Abratique phoned him and disclosed what had transpired.[16]

On the morning of July 1, 1998, alerted by information that appellant would retrieve the sacks of prohibited drugs that day, Edwin Fianza and other NBI operatives conducted a stake out at No. 27, Dr. Cariño St. While the NBI agents were conducting their surveillance, they noticed that several PNP NARCOM personnel were also watching the place.[17] The NBI then learned that the PNP NARCOM had received a tip from one of their informers regarding the presence of a huge amount of drugs in that place. The NBI and PNP NARCOM agreed to have a joint operation.

As the day wore on and appellant did not show up, the NBI agents became apprehensive that the whole operation could be jeopardized. They sought the permission of Nazarea Abreau to enter the room rented by appellant. She acceded and allowed them entry. The NBI team then searched the rented premises and found four (4) boxes and thirteen (13) sacks of marijuana, totaling 336.93 kilograms.[18]

Later that evening, NBI Special Agent Darwin Lising, with Abratique as his witness, applied for a search warrant from RTC Judge Antonio Reyes at his residence.[19] Judge Reyes ordered the NBI agents to fetch the Branch

Clerk of Court, Atty. Delilah Muñoz, so the proceedings could be properly recorded. After Atty. Muñoz arrived, Judge Reyes questioned Lising and Abratique. Thereafter, the judge issued a warrant directing the NBI to search appellant's residence at Km. 6, Dontogan, Green Valley, Baguio City for marijuana.[20]

The NBI operatives, with some PNP NARCOM personnel in tow, proceeded to appellant's residence where they served the warrant upon appellant himself.[21] The search was witnessed by appellant, members of his family, barangay officials, and members of the media.[22] Photographs were taken during the actual search.[23] The law enforcers found 26 boxes and a sack of dried marijuana[24] in the water tank, garage, and storeroom of appellant's residence.[25] The total weight of the haul was 591.81 kilograms.[26] Appellant was arrested for illegal possession of marijuana.

The seized items were then submitted to the NBI laboratory for testing. NBI Forensic Chemist Maria Carina Madrigal conducted the tests. Detailed microscopic and chromatographic examinations of the items taken from appellant's rented room at No. 27, Dr. Cariño St., as well as those from his residence at Green Valley, showed these to be marijuana.[27]

In his defense, appellant contended that the physical evidence of the prosecution was illegally obtained, being the products of an unlawful search, hence inadmissible. Appellant insisted that the search warrant was too general and the process by which said warrant was acquired did not satisfy the constitutional requirements for the issuance of a valid search warrant. Moreover, Abratique's testimony, which was heavily relied upon by the judge who issued the warrant, was hearsay.

In Criminal Case No. 15822-R, the trial court agreed with appellant that the taking of the 336.93 kilograms of marijuana was the result of an illegal search and hence, inadmissible in evidence against appellant. Appellant was accordingly acquitted of the charge. However, the trial court found that the prosecution's evidence was more than ample to prove appellant's guilt in Criminal Case No. 15800-R and as earlier stated, duly convicted him of illegal possession of marijuana and sentenced him to death.

Hence, this automatic review.

Before us, appellant submits that the trial court erred in:

- ...UPHOLDING THE LEGALITY OF THE SEARCH WARRANT DESPITE LACK OF COMPLIANCE OF (sic) SEVERAL REQUIREMENTS BEFORE IT SHOULD HAVE BEEN ISSUED AND IT BEING A GENERAL WARRANT;
- ...GRAVELY ABUSED ITS DISCRETION IN REOPENING THE CASE AND ALLOWING ABRITIQUE TO TESTIFY AGAINST APPELLANT;
- ...GIVING CREDENCE TO THE TESTIMONY OF ABRITIQUE;
- NOT ACQUITTING THE ACCUSED IN BOTH CASES AND SENTENCING HIM TO DEATH DESPITE THE ILLEGALLY OBTAINED EVIDENCE AS FOUND IN THE FIRST CASE.[28]

We find that the pertinent issues for resolution concern the following: (1) the validity of the search conducted at the appellant's residence; (2) the alleged prejudice caused by the reopening of the case and absences of the prosecution witness, on appellant's right to speedy trial; (3) the sufficiency of the prosecution's evidence to sustain a finding of guilt with moral certainty; and (4) the propriety of the penalty imposed.

- On the Validity of the Search Warrant; Its Obtention and Execution

Appellant initially contends that the warrant, which directed the peace officers to search for and seize "an

undetermined amount of marijuana,” was too general and hence, void for vagueness. He insists that Abratique could already estimate the amount of marijuana supposed to be found at appellant’s residence since Abratique helped to transport the same.

For the appellee, the Office of the Solicitor General (OSG) counters that a search warrant is issued if a judge finds probable cause that the place to be searched contains prohibited drugs, and not that he believes the place contains a specific amount of it. The OSG points out that, as the trial court observed, it is impossible beforehand to determine the exact amount of prohibited drugs that a person has on himself.

Appellant avers that the phrase “an undetermined amount of marijuana” as used in the search warrant fails to satisfy the requirement of Article III, Section 2[29] of the Constitution that the things to be seized must be particularly described. Appellant’s contention, in our view, has no leg to stand on. The constitutional requirement of reasonable particularity of description of the things to be seized is primarily meant to enable the law enforcers serving the warrant to: (1) readily identify the properties to be seized and thus prevent them from seizing the wrong items;[30] and (2) leave said peace officers with no discretion regarding the articles to be seized and thus prevent unreasonable searches and seizures.[31] What the Constitution seeks to avoid are search warrants of broad or general characterization or sweeping descriptions, which will authorize police officers to undertake a fishing expedition to seize and confiscate any and all kinds of evidence or articles relating to an offense.[32] However, it is not required that technical precision of description be required,[33] particularly, where by the nature of the goods to be seized, their description must be rather general, since the requirement of a technical description would mean that no warrant could issue.[34]

Thus, it has been held that term “narcotics paraphernalia” is not so wanting in particularity as to create a general warrant.[35] Nor is the description “any and all narcotics” and “all implements, paraphernalia, articles, papers and records pertaining to” the use, possession, or sale of narcotics or dangerous drugs so broad as to be unconstitutional.[36] A search warrant commanding peace officers to seize “a quantity of loose heroin” has been held sufficiently particular.[37]

Tested against the foregoing precedents, the description “an undetermined amount of marijuana” must be held to satisfy the requirement for particularity in a search warrant. Noteworthy, what is to be seized in the instant case is property of a specified character, i.e., marijuana, an illicit drug. By reason of its character and the circumstances under which it would be found, said article is illegal. A further description would be unnecessary and ordinarily impossible, except as to such character, the place, and the circumstances.[38] Thus, this Court has held that the description “illegally in possession of undetermined quantity/amount of dried marijuana leaves and Methamphetamine Hydrochloride (Shabu) and sets of paraphernalia” particularizes the things to be seized.[39]

The search warrant in the present case, given its nearly similar wording, “undetermined amount of marijuana or Indian hemp,” in our view, has satisfied the Constitution’s requirements on particularity of description. The description therein is: (1) as specific as the circumstances will ordinarily allow; (2) expresses a conclusion of fact – not of law – by which the peace officers may be guided in making the search and seizure; and (3) limits the things to be seized to those which bear direct relation to the offense for which the warrant is being issued.[40] Said warrant imposes a meaningful restriction upon the objects to be seized by the officers serving the warrant. Thus, it prevents exploratory searches, which might be violative of the Bill of Rights.

Appellant next assails the warrant for merely stating that he should be searched, as he could be guilty of violation of Republic Act No. 6425. Appellant claims that this is a sweeping statement as said statute lists a number of offenses with respect to illegal drugs. Hence, he contends, said warrant is a general warrant and is thus unconstitutional.

For the appellee, the OSG points out that the warrant clearly states that appellant has in his possession and control marijuana or Indian hemp, in violation of Section 8 of Republic Act No. 6425.

We have carefully scrutinized Search Warrant No. 415 (7-98),^[41] and we find that it is captioned “For Violation of R.A. 6425, as amended.”^[42] It is clearly stated in the body of the warrant that “there is probable cause to believe that a case for violation of R.A. 6425, as amended, otherwise known as the Dangerous Drugs Act of 1972, as further amended by R.A. 7659 has been and is being committed by one MODESTO TEE a.k.a. ESTOY TEE of Km. 6, Dontogan Bgy., Green Valley, Sto. Tomas, Baguio City by having in his possession and control an UNDETERMINED AMOUNT OF MARIJUANA or INDIAN HEMP in violation of the aforementioned law.”^[43] In an earlier case, we held that though the specific section of the Dangerous Drugs Law is not pinpointed, “there is no question at all of the specific offense alleged to have been committed as a basis for the finding of probable cause.”^[44] Appellant’s averment is, therefore, baseless. Search Warrant No. 415 (7-98) appears clearly issued for one offense, namely, illegal possession of marijuana.

Appellant next faults the Judge who issued Search Warrant No. 415 (7-98) for his failure to exhaustively examine the applicant and his witness. Appellant points out that said magistrate should not have swallowed all of Abratique’s statements – – hook, line, and sinker. He points out that since Abratique consented to assist in the transport of the marijuana, the examining judge should have elicited from Abratique his participation in the crime and his motive for squealing on appellant. Appellant further points out that the evidence of the NBI operative who applied for the warrant is merely hearsay and should not have been given credit at all by Judge Reyes.

Again, the lack of factual basis for appellant’s contention is apparent. The OSG points out that Abratique personally assisted appellant in loading and transporting the marijuana to the latter’s house and to appellant’s rented room at No. 27 Dr. Cariño St., Baguio City. Definitely, this indicates personal knowledge on Abratique’s part. Law enforcers cannot themselves be eyewitnesses to every crime; they are allowed to present witnesses before an examining judge. In this case, witness Abratique personally saw and handled the marijuana. Hence, the NBI did not rely on hearsay information in applying for a search warrant but on personal knowledge of the witness, Abratique.

Before a valid search warrant is issued, both the Constitution^[45] and the 2000 Revised Rules of Criminal Procedure^[46] require that the judge must personally examine the complainant and his witnesses under oath or affirmation. The personal examination must not be merely routinary or pro forma, but must be probing and exhaustive.^[47] In the instant case, it is not disputed that Judge Antonio Reyes personally examined NBI Special Investigator III Darwin A. Lising, the applicant for the search warrant as well as his witness, Danilo G. Abratique. Notes of the proceedings were taken by Atty. Delilah Muñoz, Clerk of Court, RTC of Baguio City, Branch 61, whom Judge Reyes had ordered to be summoned. In the letter of transmittal of the Clerk of Court of the RTC of Baguio City, Branch 61 to Branch 6 of said court, mention is made of “notes” at “pages 7-11.”^[48] We have thoroughly perused the records of Search Warrant No. 415 (7-98) and nowhere find said “notes.” The depositions of Lising and Abratique were not attached to Search Warrant No. 415 (7-98) as required by the Rules of Court. We must stress, however, that the purpose of the Rules in requiring depositions to be taken is to satisfy the examining magistrate as to the existence of probable cause.^[49] The Bill of Rights does not make it an imperative necessity that depositions be attached to the records of an application for a search warrant. Hence, said omission is not necessarily fatal, for as long as there is evidence on the record showing what testimony was presented.^[50] In the testimony of witness Abratique, Judge Reyes required Abratique to confirm the contents of his affidavit;^[51] there were instances when Judge Reyes questioned him extensively.^[52] It is presumed that a judicial function has been regularly performed,^[53] absent a showing to the contrary. A magistrate’s determination of probable cause for the issuance of a search warrant is paid great deference by a reviewing court,^[54] as long as there was

substantial basis for that determination.[55] Substantial basis means that the questions of the examining judge brought out such facts and circumstances as would lead a reasonably discreet and prudent man to believe that an offense has been committed, and the objects in connection with the offense sought to be seized are in the place sought to be searched.

On record, appellant never raised the want of adequate depositions to support Warrant No. 415 (7-98) in his motion to quash before the trial court. Instead, his motion contained vague generalities that Judge Reyes failed to ask searching questions of the applicant and his witness. Belatedly, however, he now claims that Judge Reyes perfunctorily examined said witness.[56] But it is settled that when a motion to quash a warrant is filed, all grounds and objections then available, existent or known, should be raised in the original or subsequent proceedings for the quashal of the warrant, otherwise they are deemed waived.[57]

In this case, NBI Special Investigator Lising's knowledge of the illicit drugs stored in appellant's house was indeed hearsay. But he had a witness, Danilo Abratique, who had personal knowledge about said drugs and their particular location. Abratique's statements to the NBI and to Judge Reyes contained credible and reliable details. As the NBI's witness, Abratique was a person on whose statements Judge Reyes could rely. His detailed description of appellant's activities with respect to the seized drugs was substantial. In relying on witness Abratique, Judge Reyes was not depending on casual rumor circulating in the underworld, but on personal knowledge Abratique possessed.

In *Alvarez vs. Court of First Instance of Tayabas*, 64 Phil. 33, 44 (1937), we held that:

The true test of sufficiency of a deposition or affidavit to warrant issuance of a search warrant is whether it has been drawn in such a manner that perjury could be charged thereon and affiant be held liable for damages caused.[58]

Appellant argues that the address indicated in the search warrant did not clearly indicate the place to be searched. The OSG points out that the address stated in the warrant is as specific as can be. The NBI even submitted a detailed sketch of the premises prepared by Abratique, thus ensuring that there would be no mistake.

A description of the place to be searched is sufficient if the officer serving the warrant can, with reasonable effort, ascertain and identify the place intended[59] and distinguish it from other places in the community.[60] A designation or description that points out the place to be searched to the exclusion of all others, and on inquiry unerringly leads the peace officers to it, satisfies the constitutional requirement of definiteness.

Appellant finally harps on the use of unnecessary force during the execution of the search warrant. Appellant fails, however, to point to any evidentiary matter in the record to support his contention. Defense witness Cipriana Tee, appellant's mother, testified on the search conducted but she said nothing that indicated the use of force on the part of the NBI operatives who conducted the search and seizure.[61] What the record discloses is that the warrant was served on appellant,[62] who was given time to read it,[63] and the search was witnessed by the barangay officials, police operatives, members of the media, and appellant's kith and kin.[64] No breakage or other damage to the place searched is shown. No injuries sustained by appellant, or any witness, appears on record. The execution of the warrant, in our view, has been orderly and peaceably performed.

2. On The Alleged Violation of Appellant's Substantive Rights

Appellant insists that the prosecution's unjustified and willful delay in presenting witness Abratique unduly delayed the resolution of his case. He points out that a total of eight (8) scheduled hearings had to be reset due to the failure or willful refusal of Abratique to testify against him. Appellant insists that said lapse on the prosecution's part violated Supreme Court Circular No. 38-98.[65] Appellant now alleges that the prosecution

deliberately resorted to delaying the case to cause him untold miseries.

For the appellee, the OSG points out that the two-month delay in the trial is not such a great length of time as to amount to a violation of appellant's right to a speedy trial. A trial is always subject to reasonable delays or postponements, but absent any showing that these delays are capricious and oppressive, the State should not be deprived of a reasonable opportunity to prosecute the criminal action.

On record, the trial court found that prosecution witness Danilo G. Abratique failed to appear in no less than eighteen (18) hearings, namely those set for February 1, 2, 3, 4, 8, 9, 10, and 24; March 9, 15, 22, and 23; April 6, 7, 8, 16, and 19, all in 1999.[66] No less than four (4) warrants of arrest were issued against him to compel him to testify.[67] The NBI agent who supposedly had him in custody was found guilty of contempt of court for failing to produce Abratique at said hearings and sanctioned.[68] The prosecution had to write the NBI Regional Director in Baguio City and NBI Director in Manila regarding the failure of the Bureau's agents to bring Abratique to court.[69] Nothing on record discloses the reason for Abratique's aforesaid absences. On the scheduled hearing of June 7, 1999, he was again absent thus causing the trial court to again order his arrest for the fifth time.[70] He also failed to show up at the hearing of June 8, 1999.[71]

Appellant now stresses that the failure of Abratique to appear and testify on twenty (20) hearing dates violated appellant's constitutional[72] and statutory right to a speedy trial.

A speedy trial means a trial conducted according to the law of criminal procedure and the rules and regulations, free from vexatious, capricious, and oppressive delays.[73] In *Conde v. Rivera and Unson*, 45 Phil. 650, 652 (1924), the Court held that "where a prosecuting officer, without good cause, secures postponements of the trial of a defendant against his protest beyond a reasonable period of time, as in this instance, for more than a year, the accused is entitled to relief by a proceeding in mandamus to compel a dismissal of the information, or if he be restrained of his liberty, by habeas corpus to obtain his freedom."

The concept of speedy trial is necessarily relative. A determination as to whether the right has been violated involves the weighing of several factors such as the length of the delay, the reason for the delay, the conduct of the prosecution and the accused, and the efforts exerted by the defendant to assert his right, as well as the prejudice and damage caused to the accused.[74]

The Speedy Trial Act of 1998, provides that the trial period for criminal cases in general shall be one hundred eighty (180) days.[75] However, in determining the right of an accused to speedy trial, courts should do more than a mathematical computation of the number of postponements of the scheduled hearings of the case.[76] The right to a speedy trial is deemed violated only when: (1) the proceedings are attended by vexatious, capricious, and oppressive delays;[77] or (2) when unjustified postponements are asked for and secured;[78] or (3) when without cause or justifiable motive a long period of time is allowed to elapse without the party having his case tried.[79]

In the present case, although the absences of prosecution witness Abratique totaled twenty (20) hearing days, there is no showing whatsoever that prosecution capriciously caused Abratique's absences so as to vex or oppress appellant and deny him his rights. On record, after Abratique repeatedly failed to show up for the taking of his testimony, the prosecution went to the extent of praying that the trial court order the arrest of Abratique to compel his attendance at trial. The prosecution likewise tried to get the NBI to produce Abratique as the latter was in the Bureau's custody, but to no avail. Eventually, the trial court ordered the prosecution to waive its right to present Abratique and rest its case on the evidence already offered.[80]

Nor do we find a delay of twenty (20) hearing days to be an unreasonable length of time. Delay of less than two months has been found, in fact, to be not an unreasonably lengthy period of time.[81]

Moreover, nothing on record shows that appellant Modesto Tee objected to the inability of the prosecution to produce its witness. Under the Rules, appellant could have moved the trial court to require that witness Abratique post bail to ensure that the latter would testify when required.[82] Appellant could have moved to have Abratique found in contempt and duly sanctioned. Appellant did neither. It is a bit too late in the day for appellant to invoke now his right to speedy trial.

No persuasive reason supports appellant's claim that his constitutional right to speedy trial was violated. One must take into account that a trial is always subject to postponements and other causes of delay. But in the absence of a showing that delays were unreasonable and capricious, the State should not be deprived of a reasonable opportunity of prosecuting an accused.[83]

Appellant next contends that the trial court gravely abused its discretion, and exhibited partiality, when it allowed the reopening of the case after the prosecution had failed to present Abratique on several occasions and had been directed to rest its case. Appellant stresses that the lower court's order to reopen the case to receive Abratique's further testimony is an indication that the trial court favored the prosecution and unduly prejudiced appellant.

On appellee's behalf, the Solicitor General points out that the trial court's order was in the interest of substantial justice and hence, cannot be termed as an abuse of discretion. The OSG points out that the prosecution had not formally rested its case and had yet to present its formal offer of evidence, hence, the submission of additional testimony by the same witness cannot be prejudicial to the accused, it being but the mere continuation of an uncompleted testimony. Furthermore, appellant did not properly oppose the prosecution's motion to reopen the case.

At the time Criminal Cases Nos. 15800-R and 15822-R were being tried, the 1985 Rules of Criminal Procedure were in effect. There was no specific provision at that time governing motions to reopen.[84] Nonetheless, long and established usage has led to the recognition and acceptance of a motion to reopen. In view of the absence of a specific procedural rule, the only controlling guideline governing a motion to reopen was the paramount interests of justice. As a rule, the matter of reopening of a case for reception of further evidence after either prosecution or defense has rested its case is within the discretion of the trial court.[85] However, a concession to a reopening must not prejudice the accused or deny him the opportunity to introduce counter evidence.[86]

Strictly speaking, however, there was no reopening of the cases in the proceedings below. A motion to reopen may properly be presented only after either or both parties have formally offered and closed their evidence, but before judgment.[87] In the instant case, the records show that on April 19, 1999, the prosecution was directed to close its evidence and given 15 days to make its formal offer of evidence.[88] This order apparently arose from the manifestation of the prosecution on April 16, 1999 that should they fail to produce witness Abratique on the next scheduled hearing the prosecution would rest its case.[89] On April 19, 1999, which was the next scheduled hearing after April 16, 1999, Abratique was absent notwithstanding notices, orders, and warrants of arrest. However, on April 27, 1999, or before the prosecution had formally offered its evidence, Abratique was brought to the trial court by the NBI. In its order of said date, the trial court pointed out that the prosecution could move to "reopen" the case for the taking of Abratique's testimony.[90] On May 7, 1999, the prosecution so moved, stressing that it had not yet formally offered its evidence and that the substantial rights of the accused would not be prejudiced inasmuch as the latter had yet to present his evidence. Appellant filed no opposition to the motion. The trial court granted the motion six days later. Plainly, there was nothing to reopen, as the prosecution had not formally rested its case. Moreover, the taking of Abratique's testimony was not for the purpose of presenting additional evidence, but more properly for the completion of his unfinished testimony. In *U.S. vs. Base*,[91] we held that a trial court is not in error, if it opts to reopen the proceedings of a case, even after both sides had rested and the case submitted for decision, by the calling of additional witnesses or recalling of witnesses so as to satisfy

the judge's mind with reference to particular facts involved in the case. A judge cannot be faulted should he require a material witness to complete his testimony, which is what happened in this case. It is but proper that the judge's mind be satisfied on any and all questions presented during the trial, in order to serve the cause of justice.

Appellant's claim that the trial court's concession to "reopen" the case unduly prejudiced him is not well taken. We note that appellant had every opportunity to present his evidence to support his case or to refute the prosecution's evidence point-by-point, after the prosecution had rested its case. In short, appellant was never deprived of his day in court. A day in court is the touchstone of the right to due process in criminal justice.[92] Thus, we are unable to hold that a grave abuse of discretion was committed by the trial court when it ordered the so-called "reopening" in order to complete the testimony of a prosecution witness.

3. On the Sufficiency of the Prosecution's Evidence

In bidding for acquittal, appellant assails the credibility of Abratique as a witness. Appellant insists that Abratique's testimony is profuse with lies, contrary to human nature, hence incredible. According to appellant, Abratique was evasive from the outset with respect to certain questions of the trial court. He adds that it appeared the court entertained in particular the suspicion that witness Abratique had conspired with appellant in committing the crime charged. Appellant questions Abratique's motive in informing the NBI about his activities related to the marijuana taking, transfer, and warehousing.

The OSG contends that Abratique's testimony, taken as a whole, is credible. It points out that Abratique testified in a straightforward manner as to his knowledge of the huge cache of prohibited drugs stashed by appellant in two different places. His testimony, said the OSG, when fused with the physical evidence consisting of 591.81 kilograms of marijuana found by law enforcers at appellant's residence, inexorably leads to the inculcation of appellant.

It is the bounden duty of the courts to test the prosecution evidence rigorously, so that no innocent person is made to suffer the unusually severe penalties meted out for drug offenses.[93] Though we scrutinized minutely the testimony of Abratique, we find no cogent reason to disbelieve him. From his account, Abratique might appear aware treading the thin line between innocence and feeling guilty, with certain portions of his story tending to be self-exculpatory. However, his whole testimony could not be discredited. The established rule is that testimony of a witness may be believed in part and disbelieved in other parts, depending on the corroborative evidence and the probabilities and improbabilities of the case. But it is accepted, as a matter of common sense, that if certain parts of a witness' testimony are found true, his testimony cannot be disregarded entirely.[94]

Abratique testified in open court that appellant rented the taxicab he was driving, and he helped appellant transport huge amounts of marijuana to appellant's rented room at No. 27 Dr. Cariño St., Baguio City and to appellant's residence at Km. 6, Dontogan, Green Valley, Sto. Tomas, Baguio City. He also declared on the witness stand that out of fear of being involved, he decided to divulge his knowledge of appellant's possession of large caches of marijuana to the NBI. When the places referred to by Abratique were searched by the authorities, marijuana in staggering quantities was found and seized by the law enforcers. Stated plainly, the physical evidence in this case corroborated Abratique's testimony on material points.

Appellant imputes questionable motives to Abratique in an effort to discredit him. He demands that Abratique should likewise be prosecuted. However, by no means is the possible guilt of Abratique a tenable defense for appellant. Nor would Abratique's prosecution mean appellant's absolution.

In a prosecution for illegal possession of dangerous drugs, the following facts must be proven with moral certainty: (1) that the accused is in possession of the object identified as prohibited or regulated drug; (2) that such

possession is not authorized by law; and (3) that the accused freely and consciously possessed the said drug.[95]

We find the foregoing elements proven in Criminal Case No. 15800-R beyond reasonable doubt.

In said case, the testimony of Abratique and the recovery of 591.81 kilograms of marijuana from appellant's residence served to prove appellant's possession of a prohibited drug. Tests conducted by the NBI forensic chemist proved the seized articles to be marijuana. These articles were seized pursuant to a valid search warrant and hence, fully admissible in evidence.

In *People v. de los Reyes*, 239 SCRA 439 (1994), we held that the Dangerous Drugs Act applies generally to all persons and proscribes the sale of dangerous drugs by any person, and no person is authorized to sell such drugs. Said doctrine is equally applicable with respect to possession of prohibited drugs. Republic Act No. 6425, which penalizes the possession of prohibited drugs, applies equally to all persons in this jurisdiction and no person is authorized to possess said articles, without authority of law.

Anent the third element, we have held that to warrant conviction, possession of illegal drugs must be with knowledge of the accused or that animus possidendi existed together with the possession or control of said articles.[96] Nonetheless, this dictum must be read in consonance with our ruling that possession of a prohibited drug per se constitutes prima facie evidence of knowledge or animus possidendi sufficient to convict an accused absent a satisfactory explanation of such possession.[97] In effect, the onus probandi is shifted to accused to explain the absence of knowledge or animus possidendi[98] in this situation.

Appellant Modesto Tee opted not to testify in his defense. Instead, he presented his mother as his lone witness, who testified on matters totally irrelevant to his case. We can only conclude that, failing to discharge the burden of the evidence on the possession of prohibited drug, appellant's guilt in Criminal Case No. 15800-R was established beyond reasonable doubt.

3. On The Proper Penalty

Under Republic Act No. 6425 as amended by Republic Act No. 7659, the penalty of reclusion perpetua to death and a fine ranging from five hundred thousand pesos (P500,000.00) to ten million pesos (P10,000,000.00)[99] shall be imposed if the quantity of marijuana involved in a conviction for possession of marijuana or Indian hemp shall be 750 grams or more.[100]

In the present case, the quantity of marijuana involved has been shown by the prosecution to be far in excess of 750 grams, as stressed by the trial court:

The volume is rather staggering. It is almost one whole house or one whole room. In fact, when they were first brought to the court, it took hours to load them on the truck and hours also to unload them prompting the court to direct that the boxes and sack of marijuana be instead kept at the NBI office in Baguio. And the identification of said marijuana during the trial was made in the NBI premises itself by the witnesses since it was physically cumbersome and inconvenient to keep bringing them to the court during every trial.[101]

In sentencing appellant to death, the trial court noted not only the huge quantity of marijuana bales involved, but also "the acts of accused of hiding them in different places...and transferring them from place to place and making them appear as boxes of cigarettes to avoid and evade apprehension and detection." They showed his being a big supplier, said the trial court, [whose] criminal perversity and craft that "deserve the supreme penalty of death." [102]

We are unable to agree, however, with the penalty imposed by the trial court. The legislature never intended that where the quantity involved exceeds those stated in Section 20 of Republic Act No. 6425 the maximum penalty of

death shall automatically be imposed.[103] The statute prescribes two indivisible penalties: reclusion perpetua and death. Hence, the penalty to be imposed must conform with Article 63[104] of the Revised Penal Code. As already held, the death penalty law, Republic Act No. 7659 did not amend Article 63 of the Revised Penal Code.[105] The rules in Article 63 apply although the prohibited drugs involved are in excess of the quantities provided for in Section 20 of Republic Act No. 6425.[106] Thus, finding neither mitigating nor aggravating circumstances in the present case, appellant's possession of 591.81 kilograms of marijuana in Criminal Case No. 15800-R, does not merit capital punishment but only the lesser penalty of reclusion perpetua.

The trial court imposed a fine on appellant in the sum of One Million Pesos (P1,000,000.00), without subsidiary imprisonment in case of insolvency. The imposition of a fine is mandatory in cases of conviction of possession of illegal drugs. This being within the limits allowed by the law, the amount of the fine must be sustained. All these sanctions might not remedy all the havoc wrought by prohibited drugs on the moral fiber of our society, especially the youth.[107] But these penalties should warn peddlers of prohibited drugs that they cannot ply their trade in our streets with impunity.

WHEREFORE, the decision of the Regional Trial Court of Baguio City, Branch 6, in Criminal Case No. 15800-R, convicting appellant MODESTO TEE alias "ESTOY" TEE of violation of Section 8 of Republic Act No. 6425, as amended, is AFFIRMED with the MODIFICATION that appellant is hereby sentenced to suffer the penalty of reclusion perpetua. The fine of ONE MILLION (P1,000,000.00) PESOS imposed on him is sustained. Appellant is likewise directed to pay the costs of suit.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Mendoza, Panganiban, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., and Azcuna, JJ., concur.

[1] Records, pp. 210-234.

[2] Republic Act No. 6425, SEC. 8. Possession or Use 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 possess or use any prohibited drug subject to the provisions of Section 20 hereof.

[3] Records, pp. 233-234.

[4] Id. at 1.

[5] Id. at 26.

[6] Id. at 32.

[7] Rollo, p. 32.

[8] Records, p. 52; TSN, September 8, 1998, p. 3.

[9] TSN, March 8, 1999, p. 5.

[10] Id. at 6.

[11] Id. at 8-9.

[12] Id. at 10.

[13] *Id.* at 12-13.

[14] TSN, June 16, 1999, pp. 3-4.

[15] *Supra* note 13 at 13.

[16] TSN, June 16, 1999, p. 15; TSN, February 9, 1999, pp. 4-6.

[17] TSN, February 9, 1999, p. 9; TSN, February 3, 1999, pp. 5-7; TSN, February 1, 1999, pp. 5-7.

[18] TSN, November 17, 1998, p. 20; TSN, February 1, 1999, pp. 9, 11, 14-15; TSN, February 3, 1999, pp. 9-10; Exh. "A", Folder of Exhibits, p. 1; Exh. "V" and sub-markings, *Id.* at 47.

[19] TSN, February 10, 1999, pp. 8-9.

[20] *Id.* at 11-12; Exh. "Y," Folder of Exhibits, p. 73.

[21] TSN, February 10, 1999, p. 14; TSN, February 9, 1999, pp. 14-15; TSN, February 3, 1999, pp. 16-17.

[22] TSN, February 1, 1999, pp. 29-30; TSN, February 9, 1999, pp. 15-16, 26; TSN, February 10, 1999, pp. 15-17.

[23] Exh. "FF" to "FF-14," Folder of Exhibits, pp. 87-88; TSN, February 10, 1999, pp. 17-21; TSN, February 3, 1999, pp. 18-20.

[24] Exh. "U-1" to "U-27," Folder of Exhibits, pp. 20-46.

[25] Exh. "U," Folder of Exhibits, p. 19; TSN, February 9, 1999, pp. 15-17; TSN, February 10, 1999, pp. 23-24.

[26] Exh. "W" and sub-markings, *Id.* at 48; Exhibit "X-22," *Id.* at 72.;

[27] See TSN, November 5, 1998, pp. 10, 12-13; 15, 16-17, 18; TSN, November 17, 1998, pp. 5-8, 10, 12-15, 18-19; TSN, November 24, 1998, pp. 4-5, 7, 8-9, 11-13, 15-22; TSN, December 2, 1998, pp. 3-13, 15, 17-18; Exh. "CC," Folder of Exhibits, p. 77; Exh. "W-1," *Id.* at 48.

[28] Rollo, p. 79.

[29] SEC. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

[30] *People v. Two Roulette Wheels and Tables*, 326 Ill. App. 143, 61 NE 2d 277, 281 (1945).

[31] *People v. Aruta*, 288 SCRA 626, 650 (1998).

[32] *People v. Del Rosario*, 234 SCRA 246, 253 (1994).

[33] *US v. Quantity of Extracts, Bottles, Etc.*, (DC Fla) 54 F2d 643, 644 (1931).

[34] *People v. Kahn*, 256 Ill. App. 415, 419 (1930).

[35] *People v. Henry*, 175 Colo 523, 482 P2d 357, 361 (1971).

[36] *People v. Leahy*, 175 Colo 339, 484 P2r 778, 781 (1970).

[37] *US v. Tucker*, (DC NY) 262 F Supp 305, 308 (1966).

[38] *North v. State*, 159 Fla 854, 32 So 2d 915, 917 (1947); *State v. Nejin*, 140 La 793, 74 So 103, 106 (1917); *Lea v. State*, 181 Tenn 378, 181 SW 2d 351, 352-353 (1944); *Cagle v. State*, 180 SW 2d 928, 936 (1944).

[39] *People v. Dichoso*, 223 SCRA 174, 184 (1993).

[40] *Bache & Co., (Phil.), Inc., v. Ruiz*, 37 SCRA 823, 835 (1971).

[41] Exh. "Y," Folder of Exhibits, p. 73.

[42] *Ibid.*

[43] *Ibid.*

[44] *Olaes v. People*, 155 SCRA 486, 491 (1987).

[45] Art. III, Sec. 2.

[46] Rule 126, Sec. 4. Requisites for issuing search warrant. – A search warrant shall not issue except upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the things to be seized which may be anywhere in the Philippines.

[47] Rule 126, Sec. 5. Examination of complainant; record. – The judge must, before issuing the warrant, personally examine in the form of searching questions and answers, in writing and under oath, the complainant and the witnesses he may produce on facts personally known to them and attach to the record their sworn statements, together with the affidavits submitted.

[48] Folder of Exhibits, pp. 79-80.

[49] *Alvarez v. Court of First Instance of Tayabas*, 64 Phil. 33, 45 (1937).

[50] *State v. Sherrick*, 98 Ariz 46, 402 P2d 1, 6 (1965), cert den 384 US 1022, 16 L. Ed 2d 1024, 86 S Ct. 1938.

[51] TSN, June 16, 1999, p. 23

[52] TSN, June 17, 1999, pp. 10-11.

[53] Rule 131. Sec. 3. Disputable presumptions. – The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

xxx

(m) That official duty has been regularly performed.

[54] *Spinelli v. United States*, 393 US 410, 89 S. Ct 584, 21 L. Ed 2d 637, 645 (1969).

[55] *Aguilar v. Texas*, 378 US 108, 12 L. Ed 2d 723, 726 (1964), 84 S Ct. 1509.

[56] Rollo, pp. 210-212, Reply to Appellee's Brief.

[57] *Malaloan v. Court of Appeals*, 232 SCRA 249, 268 (1994).

[58] *Prudencio v. Dayrit*, 180 SCRA 69, 78 (1989)

[59] *People v. Veloso*, 48 Phil. 169, 180 (1925).

[60] *Ex parte Flores*, 452 SW 2d 443, 444 (1970).

[61] TSN, August 17, 1999, pp. 5, 9-10.

[62] TSN, February 1, 1999, p. 20; TSN, February 3, 1999, p. 16-17; TSN, February 9, 1999, pp. 14-15; TSN, February 10, 1999, p. 14.-15.

[63] Exh. "FF," Folder of Exhibits, p. 87; Exhs. "FF-7" and "FF-8," Id. at 88.

[64] TSN, February 10, 1999, pp. 16-17. See also TSN, February 9, 1999, pp. 15-16; TSN, February 1, 1999, p. 39.

[65] The Circular is entitled "Implementing The Provisions Of Republic Act No. 8493, Entitled 'AN ACT TO ENSURE A SPEEDY TRIAL OF ALL CRIMINAL CASES BEFORE THE SANDIGANBAYAN, REGIONAL TRIAL COURT, METROPOLITAN TRIAL COURT, MUNICIPAL TRIAL COURTS IN CITIES, MUNICIPAL TRIAL COURT AND MUNICIPAL CIRCUIT TRIAL COURT, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES.'"

[66] Records, p. 158.

[67] See Id at 125, 137, 140, and 145.

[68] Id. at 151-152.

[69] Id. at 144, 146-147.

[70] Id. at 175.

[71] Id. at 179.

[72] Art. III. Sec. 14. (2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and by counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, (underscoring supplied) impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

[73] *Kalaw v. Apostol and Alcazar*, 64 Phil. 852, 857 (1937).

[74] *Martin v. Ver, et al.*, 123 SCRA 745, 751 (1983).

[75] Republic Act No. 8493, SEC. 6. Time Limit for Trial. – In criminal cases involving persons charged of a crime, except those subject to the Rules on Summary Procedure, or where the penalty prescribed by law does not exceed six (6) months imprisonment, or a fine of one thousand pesos (P1,000.00) or both, irrespective of other imposable penalties, the justice or judge shall, after consultation with the public prosecutor and the counsel for the accused, set the case for continuous trial on a weekly or other short-term trial calendar at the earliest possible time so as to ensure speedy trial. In no case shall the entire trial period exceed one hundred eighty (180) days from the first day of trial, except as otherwise authorized by the Chief Justice of the Supreme Court pursuant to Section 3, Rule 22 of the Rules of Court.

[76] *People v. Tampal*, 314 Phil. 35, 43 (1995).

[77] *Que v. Cosico*, 177 SCRA 410, 416 (1989), citing *Kalaw v. Apostol, et al*, 64 Phil. 852 (1937).

[78] *Conde v. Rivera and Unson*, 45 Phil. 650, 652 (1924).

[79] *Andres, et al., v. Cacdac, Jr., et al.*, 113 SCRA 216, 223 (1982), citing *Acebedo v. Sarmiento*, 26 SCRA 247

(1970).

[80] Records, p. 157.

[81] *People v. Tampal*, 314 Phil. 35 (1995).

[82] Rule 119, Sec. 14. Bail to secure appearance of material witness. - When the court is satisfied, upon proof or oath, that a material witness will not testify when required, it may, upon motion of either party, order the witness to post bail in such sum as may be deemed proper. Upon refusal to post bail, the court shall commit him to prison until he complies or is legally discharged after his testimony has been taken.

[83] *Tai Lim v. Court of Appeals*, 317 SCRA 521, 526 (1999).

[84] This has been remedied under the 2000 Rules of Criminal Procedure. Rule 119, Sec. 24 of said Rules now provides that: "At any time before finality of the judgment of conviction, the judge may, *motu proprio* or upon motion, with hearing in either case, reopen the proceedings to avoid a miscarriage of justice. The proceedings shall be terminated within thirty (30) days from the order granting it."

[85] *People v. Concepcion*, 84 Phil. 787, 788 (1949).

[86] *Santiago v. Sandiganbayan*, 363 Phil. 605, 613 (1999).

[87] *Alegre v. Reyes*, 161 SCRA 226, 231 (1988).

[88] Records, p. 157.

[89] *Id.* at 152.

[90] *Id.* at 158.

[91] 9 Phil. 48, 51 (1907). See also *United States v. Cinco*, 8 Phil. 388, 390 (1907), citing *United States v. Vizquera, et al.*, 4 Phil. 380 (1905).

[92] *People v. Verra*, G.R. No. 134732, May 29, 2002, p. 1.

[93] *People v. Baccoy, et al.*, G.R. No. 134002, September 12, 2002, p. 8; See also *People v. Doria*, 361 Phil. 595, 596 (1999).

[94] *People v. Pacabes*, 137 SCRA 158, 164 (1985).

[95] *People v. Ting Uy*, G.R. Nos. 144506-07, April 11, 2002, p. 11, citing *Manalili v. Court of Appeals*, 280 SCRA 400 (1997).

[96] *United States v. Tin Masa*, 17 Phil 463, 465 (1910).

[97] *People v. Baludda*, 318 SCRA 503, 511 (1999), citing *United States v. Bandoc*, 23 Phil. 14 (1912).

[98] *People v. Burton*, 335 Phil. 1003, 1025 (1997).

[99] SEC. 8. Possession or Use 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 possess or use any prohibited drug subject to the provisions of Section 20 hereof.

[100] SEC. 20. Application of Penalties, Confiscation and Forfeiture of the Proceeds or Instruments 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.

x x x

[101] Rollo, p. 51.

[102] Id. at 55.

[103] *People v. Che Chun Ting*, 328 SCRA 592, 604-605 (2000); *People v. Montilla*, 285 SCRA 703, 725 (1998).

[104] ART. 63. Rules for the application of indivisible penalties. – In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

- When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.

- When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

x x x

[105] *People v. Gatward*, 335 Phil. 440, 457 (1997).

[106] See for instance, *People v. Samson*, G.R. Nos. 139377-78, May 29, 2002, p. 35.

[107] *People v. San Juan*, G.R. No. 124525, February 15, 2002, p. 12.

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