

## SECOND DIVISION

[ G.R. No. 250295, March 15, 2021 ]

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. NACI BORRAS Y LASCANO, RESPONDENT.**

### DECISION

**LAZARO-JAVIER, J.:**

#### The Case

Petitioner People of the Philippines, through the Office of the Solicitor General (OSG), assails the Decision<sup>[1]</sup> dated October 28, 2019 of the Court of Appeals in CA-G.R. SP No. 159780 entitled "*People of the Philippines v. Hon. Soliman M. Santos, Jr., in his capacity as Presiding Judge of RTC Branch 61, Naga City and Naci Borrás y Lascano*" upholding private respondent Naci Borrás y Lascano's plea bargain sans the prosecutor's conformity.

#### Antecedents

By Informations<sup>[2]</sup> dated March 10, 2017, private respondent was charged with violations of Sections 5 and 11, Article II of Republic Act No. 9165 (RA 9165), as amended by Republic Act No. 10640 (RA 10640), viz.:

#### Criminal Case No. 2017-0358

That on March 10, 2017, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, [did] [then] and there, willfully, unlawfully and criminally sell, dispense, and deliver one (1) small heat-sealed transparent plastic sachet, containing white crystalline substance weighing 0.032 gram, later marked as RCP3-10-17, to poseur buyer PO2 Randy C. Pitallano, which when tested was found positive for the presence of Methamphetamine Hydrochloride popularly known as "*shabu*," a dangerous drug, in violation of the above cited law.

ACTS CONTRARY TO LAW.

#### Criminal Case No. 2014-0359

That on March 10, 2017, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, [did] then and there, willfully, unlawfully and criminally have in his possession, custody and control three (3) heat-sealed & masking tape-sealed transparent plastic sachets, containing white crystalline substances, described and later marked as: 1) RCP-1 3-10-17 weighing 0.1116 gram, 2) RCP-4 3-10-17 weighing 0.037 gram and 3) RCP-3 3-10-17 weighing 0.012 gram; with aggregate weight of 0.165 [gram]. Said items when tested were found to be Methamphetamine Hydrochloride, popularly known as "*shabu*," a dangerous drug, in violation of the above cited law.

ACTS CONTRARY TO LAW.

On arraignment, private respondent pleaded not guilty to both charges. Trial ensued.

Meantime, on August 15, 2017, the Court promulgated ***Estipona v. Lobrigo***<sup>[3]</sup> declaring as unconstitutional Section 23<sup>[4]</sup> of RA 9165 for being contrary to the Supreme Court's rule-making authority under Section 5 (5),<sup>[5]</sup> Article VIII of the 1987 Constitution. Section 23 prohibits a person charged under RA 9165 to avail of plea bargaining.

Thereafter, the Department of Justice (DOJ) issued Department Circular No. 061-17 or the "Guidelines on Plea Bargaining Agreement for RA 9165 Otherwise Known as the 'Comprehensive Dangerous Drugs Act of 2000'" dated November 21, 2017,<sup>[6]</sup> viz.:

Offense charged in Information		Acceptable Plea Bargain	
Section	Penalty	Section	Penalty
Section 5 <i>Sale, Trading, etc. of Dangerous Drugs</i>	Life Imprisonment to Death & Fine from Php500k to Php10M	No Plea Bargain Allowed	
Section 11, par. 3 <i>Possession of Dangerous Drugs</i>  (Where quantity of "shabu", opium, morphine, heroin, cocaine is less than 5 grams, etc.)	12 yrs. & 1 day to 20 yrs. and Fine from Php300k to Php400k	Sec. 15 <i>Use of Dangerous Drugs</i>	6 mos. Rehab (1st Offense)  6 yrs. & 1 day to 12 yrs. & fine from Php50k to Php200k (for 2nd offense)

Following **Estipona**, on April 12, 2018, the Court promulgated A.M. No. 18-03-16-SC,<sup>[7]</sup> adopting the plea bargaining framework in drugs cases, viz.:

Offense Charged			Acceptable Plea Bargain	
Section	Penalty	Quantity	Section	Penalty <sup>[8]</sup>
Section 11, par. 3. <i>Possession of Dangerous Drugs</i>  (Where quantity of <i>shabu</i> , opium, morphine, heroin, cocaine is less than 5 grams)	12 years & 1 day to 20 years and fine ranging from Php300,000 to Php400,000	.01 gram to 4.99 grams	Section 12. <i>Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs</i>	6 months and 1 day to 4 years and a fine ranging from Php10,000 to Php50,000 <sup>[9]</sup>
Section 5. <i>Sale, Trading, etc. of Dangerous Drugs</i>  (Methamphetamine hydrochloride or <i>shabu</i> only)	Life Imprisonment to Death and fine ranging from Php500,000 to Php10,000,000	.01 gram to .99 grams (methamphetamine hydrochloride or <i>shabu</i> only)	Section 12. <i>Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs</i>	6 months and 1 day to 4 years and a fine ranging from Php10,000 to Php50,000 <sup>[10]</sup>

On May 17, 2018, the DOJ issued Regional Prosecution Office Order No. 027-E-18<sup>[11]</sup> reiterating Department Circular No. 061-17.

While petitioner was presenting its evidence on May 28, 2018, private respondent filed a plea bargaining proposal<sup>[12]</sup> to withdraw his earlier plea of not guilty in order to plead guilty to two (2)

counts of Illegal Possession of Drug paraphernalia under Section 12 of RA 9165, as amended by RA 10640.

Petitioner objected on ground that DOJ Circular No. 061-17,<sup>[13]</sup> the prevailing circular at that time, proscribed plea bargaining for the crime of Illegal Sale of Dangerous Drugs under Section 5 of RA 9165, as amended by RA 10640. The same circular decreed that plea bargaining should be done before the prosecution commenced its presentation of evidence. Meanwhile, violation of Section 11 of the same law may be the subject of plea bargaining to the lesser offense of illegal use of dangerous drugs.

Subsequently, on June 26, 2018, the DOJ issued Department Circular No. 027-18 or the "Amended Guidelines on Plea Bargaining for Republic Act No. 9165, otherwise known as the 'Comprehensive Dangerous Drugs Act of 2000'" amending Department Circular No. 061-17 dated November 21, 2017. According to this department circular, private respondent may only plead guilty to a lesser offense, as follows:

Offense charged in the Information		Acceptable Plea Bargain	
Section	Penalty	Section	Penalty
Section 5 Sale, Trading, etc. of Dangerous Drugs	Life Imprisonment to Death & Fine from Php500k to Php10M	Section 11, par. 3 Possession of Dangerous Drugs (Plea bargaining is allowed only if the drugs involved are "shabu" and/or marijuana and the quantity of "shabu" is less than 5 grams and the quantity of marijuana is less than 300 grams)	12 yrs. & 1 day to 20 yrs. and Fine from Php300k to Php400k
Section 11, par. 3 Possession of Dangerous Drugs (Where quantity of "shabu", opium, morphine, heroin, cocaine, et al. is less than 5 grams; marijuana is less than 300 grams)	12 yrs. & 1 day to 20 yrs. and Fine from Php300k to Php400k	Section 12 Possession of Equipment, Apparatus & Other Paraphernalia for Dangerous Drugs	6 months & 1 day to 4 years and a Fine Ranging from Php10k to Php50k

#### The Trial Court's Ruling

By Resolution<sup>[14]</sup> dated July 20, 2018, the trial court granted private respondent's plea bargaining proposal and ordered his re-arraignment despite petitioner's objection, thus:

WHEREFORE, premises considered, Department of Justice (DOJ) Circular No. 061 dated [November] 21, 2017, DOJ Circular No. 027 dated June 26, 2018 and Regional Prosecution Office (RPO) Order No. 027-E-18 dated May 17, 2018 are hereby DECLARED UNCONSTITUTIONAL AND INVALID for being in contravention to or undermining the rule-making power of the SC, its *Estipona* Decision, its A.M. No. 18-03-16-SC Resolution (*Adopting the Plea Bargaining Framework in Drug Cases*), and the equal protection clause in their (the said DOJ issuances) application if not in their

design. The defense Proposal for Plea Bargaining is ALLOWED over the "vigorous" objection of the prosecution. RE-ARRAIGN the accused in accordance therewith at the next scheduled hearing (on July 23).<sup>[15]</sup>

Too, the trial court *motu proprio* declared as unconstitutional DOJ Circular Nos. 061-17 and 027-18, and RPO Order No. 027-E-18 (DOJ Issuances) on the following grounds:

**First.** These issuances were contrary to the landmark case of ***Estipona*** and A.M. No. 18-03-16-SC;

**Second.** The same effectively blocked the otherwise allowable plea bargains in numerous Section 5 cases involving miniscule amounts of dangerous drugs;

**Third.** They encroach on the Supreme Court's rule-making power under Article VIII, Section 5(5)<sup>[16]</sup> of the 1987 Constitution; and

**Fourth.** They undermine the state policy behind RA 9165 to balance repression and punishment on the one hand, with treatment, rehabilitation, and reintegration on the other.

According to the trial court, since the opposition to private respondent's plea bargaining proposal was based on the DOJ issuances that had already been declared unconstitutional, there was no more need to require the prosecutor's consent thereto.

Petitioner's subsequent motion for reconsideration<sup>[17]</sup> was denied under Resolution<sup>[18]</sup> dated August 25, 2018.

Meantime, on July 23, 2018, private respondent was re-arraigned, during which he pleaded guilty to two (2) counts of Illegal Possession of Drug Paraphernalia under Section 12<sup>[19]</sup> of RA 9165, as amended by RA 10640.<sup>[20]</sup>

Thereafter, the trial court rendered a verdict of conviction per Judgment<sup>[21]</sup> dated August 31, 2018, viz.:

WHEREFORE, premises considered, judgment is hereby rendered FINDING the **accused NACI BORRAS y LASCANO** GUILTY beyond reasonable doubt:

[a] In Crim. Case No. 0358 as principal in the special offense of violation of R.A. 9165, Sec. 12 and is SENTENCED to an indeterminate prison term of THREE (3) YEARS **as minimum to FOUR (4) years as maximum**, and a FINE of THIRTY THOUSAND PESOS (P30,000.00); and

[b] In Crim. Case No. 0359 as principal in the special offense of violation of R.A. 9165, Sec. 12 and is SENTENCED to an indeterminate prison term of TWO (2) years **as minimum to THREE (3) YEARS as maximum**, and a FINE of TWENTY THOUSAND PESOS (P20,000.00).<sup>[22]</sup>

### **Proceedings before the Court of Appeals**

On *certiorari*,<sup>[23]</sup> petitioner charged the trial court with Grave Abuse of Discretion when it granted private respondent's proposal to plead guilty to lesser offenses over the prosecution's vigorous objection. It insisted that the prosecutor's consent in plea bargaining was a condition precedent to a valid plea of guilt to a lesser offense. Too, the trial court gravely abused its discretion when it unilaterally voided the relevant DOJ issuances.

In his comment,<sup>[24]</sup> private respondent supported the trial court's dispositions. He countered that the trial court was authorized to overrule the prosecution's objections to a plea bargaining. At any rate, the trial court did not gravely abuse its discretion when it declared the relevant DOJ issuances as unconstitutional. For one, the validity of these DOJ issuances was already ripe for adjudication. For another, the trial court had *locus standi* to pass upon the validity of the DOJ issuances because the same were of transcendental significance.

## The Ruling of the Court of Appeals

Through its assailed Decision<sup>[25]</sup> dated October 28, 2019, the Court of Appeals affirmed, with modification, viz.:

**WHEREFORE**, premises considered, the instant petition for certiorari is hereby **DENIED**. The Judgment dated August 31, 2018 of the Regional Trial Court (RTC), Branch 61, Naga City finding private respondent Naci Borrás y Lascano guilty of two (2) counts of violation of Section 12, Article II of RA No. 9165 and sentencing him to suffer an indeterminate prison term of three (3) years, as minimum, to four (4) years, as maximum, and a fine of P30,000.00 for the first count of illegal possession of drug paraphernalia; and, two (2) years, as minimum, to three (3) years, as maximum, and a fine of P20,000.00 for the second count, is **AFFIRMED with MODIFICATION** in that the portions of the Plea Bargaining Resolutions dated July 20, 2018 and August 25, 2018, respectively, which declared as unconstitutional the Department of Justice (DOJ) Circular Nos. 061 and 027 are **DELETED**.

**SO ORDERED.**<sup>[26]</sup>

Citing the Resolution dated April 2, 2019 in *Re: Letter of Associate Justice Diosdado M. Peralta on the Suggested Plea Bargaining Framework Submitted by the Philippine Judges Association*, the Court of Appeals held that judges may allow plea bargaining even over the prosecution's objection where the sole ground for the objection was that it would weaken the government's campaign against illegal drugs. According to the Court of Appeals, petitioner failed to allege, much less, prove that private respondent was a recidivist, habitual offender, or known in the community as a drug addict and a troublemaker. There was also no showing that private respondent had undergone rehabilitation. There was no reason, therefore, to deny respondent's plea bargain. At any rate, the consent of the prosecutor is not required at all times.

The Court of Appeals, however, found that the trial court committed Grave Abuse of Discretion when it *motu proprio* passed upon the constitutionality of the relevant DOJ issuances. For the issue of whether to grant the plea bargaining may be resolved by simply applying A.M. No. 18-03-16-SC. Consequently, it deleted from the trial court's ruling the pronouncement declaring the DOJ issuances unconstitutional.

## The Present Petition

Petitioner<sup>[27]</sup> now seeks affirmative relief from the Court. It insists that the prosecutor's consent must be secured before an accused can validly plead guilty to a lesser offense. Meanwhile, it was error for the Court of Appeals to have relied on this Court's Resolution dated April 2, 2019 in *Re: Letter of Associate Justice Diosdado M. Peralta on the Suggested Plea Bargaining Framework Submitted by the Philippine Judges Association* in support of the trial court's action which overruled the prosecution's objection to private respondent's plea bargaining proposal. For one, the resolution cannot be applied retroactively to private respondent whose original plea was entered way back in 2018. For another, the resolution does not at all totally dispense with the prosecutor's consent.

In his comment,<sup>[28]</sup> private respondent defends the Court of Appeals' dispositions. He counters that neither the consent of the prosecutor nor the consent of the offended party is indispensable to the validity of a plea to a lesser offense. A contrary position would be tantamount to a surrender of the court's sole and supreme authority to command the course of a case. Under A.M. No. 18-03-16-SC, judges may allow plea bargaining even over the prosecution's objection. Since he was allowed to bargain under A.M. No. 18-03-16-SC, the prosecution had no basis to oppose it.

## Issue

Is the consent of the prosecutor indispensable to a valid plea bargain in drugs cases?

## Our Ruling