



Republic of the Philippines  
**Supreme Court**  
 Manila

SUPREME COURT OF THE PHILIPPINES  
 PUBLIC INFORMATION OFFICE  
**RECORDED**  
 AUG 20 2019  
 BY: Yg  
 TIME: 1:20

**THIRD DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
 Petitioner,

**G.R. No. 227899**

Present:

- versus -

PERALTA, J.,  
*Chairperson,*  
 LEONEN,  
 REYES, A., JR.,  
 HERNANDO, and  
 INTING, JJ.

**COURT OF APPEALS, P/SUPT.**  
**DIONICIO BORROMEYO y**  
**CARBONEL and SPO1 JOEY**  
**ABANG y ARCE,**

Promulgated:

Respondents. July 10, 2019

*[Signature]*

X-----X

**DECISION**

**REYES, A., JR., J.:**

Before the Court is a Petition for *Certiorari*<sup>1</sup> under Rule 65 of the Rules of Court assailing the Decision<sup>2</sup> dated June 29, 2016 and Amended Decision<sup>3</sup> dated August 25, 2016 of the Court of Appeals (CA) in CA-G.R. CR HC No. 06271, finding Police Superintendent Dionicio Borromeo y Carbonel (P/Supt. Borromeo) and Senior Police Officer 1 Joey Abang y Arce (SPO1 Abang) (private respondents) guilty of acting as protectors or coddlers under Section 8, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002. The present petition seeks to reverse and set aside these decisions, insofar as the penalties are concerned, for having been issued with grave abuse of discretion. Further, it prays for the imposition of the penalty of life imprisonment and a fine ranging from ₱500,000.00 to ₱10,000,000.00 on private respondents for being liable as co-conspirators.

<sup>1</sup> Rollo, pp. 3-40.

<sup>2</sup> Penned by Associate Justice Jhosep Y. Lopez, with Associate Justices Ramon R. Garcia and Leoncia R. Dimagiba, concurring; id. at 46-90.

<sup>3</sup> Id. at 92-97.

*Reyes*

### The Facts

The private respondents were charged with violation of Section 8, Article II of R.A. No. 9165, in relation to Section 26(d), Article II of the same Act, to wit:

**Section 8. *Manufacture of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall engage in the manufacture of any dangerous drug.**

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person, who, unless authorized by law, shall manufacture any controlled precursor and essential chemical.

The presence of any controlled precursor and essential chemical or laboratory equipment in the clandestine laboratory is a *prima facie* proof of manufacture of any dangerous drug. It shall be considered an aggravating circumstance if the clandestine laboratory is undertaken or established under the following circumstances:

1. Any phase of the manufacturing process was conducted in the presence or with the help of minor/s;
2. Any phase of the manufacturing process was established or undertaken within one hundred (100) meters of a residential, business, church or school premises;
3. Any clandestine laboratory was secured or protected with booby traps;
4. Any clandestine laboratory was concealed with legitimate business operations; or
5. Any employment of a practitioner, chemical engineer, public official or foreigner.

The maximum penalty provided for under this Section shall be imposed upon any person, who organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

x x x x

**Section 26. *Attempt or Conspiracy.* - Any attempt or conspiracy to commit the following unlawful acts shall be penalized by the same penalty prescribed for the commission of the same as provided under this Act:**

1. Importation of any dangerous drug and/or controlled precursor and essential chemical;

*Meyer*

2. Sale, trading, administration, dispensation, delivery, distribution and transportation of any dangerous drug and/or controlled precursor and essential chemical;
3. Maintenance of a den, dive or resort where any dangerous drug is used in any form;
4. **Manufacture of any dangerous drug and/or controlled precursor and essential chemical; and**
5. Cultivation or culture of plants which are sources of dangerous drugs. (Emphasis Ours)

On July 9, 2008, combined forces from the Naguilian Police Station, La Union Police Provincial Office, Philippine Drug Enforcement Agency and barangay officials, raided the house and piggery owned by one Eusebio Tangalin (Eusebio) in Barangay Upper Bimmotobot, Naguilian, La Union. The day before, local government officials, upon the instructions of Naguilian Mayor Abraham Rimando (Mayor Rimando), conducted a surprise inspection of the said property. Reports reached Mayor Rimando that the aforesaid place was reeking with a foul odor detrimental to the welfare of residents living near the property.<sup>4</sup>

On the strength of a search warrant issued, authorities combed the property and confirmed their initial suspicion - that it was a clandestine *shabu* laboratory. Seized from the compound were truckloads of dangerous drugs (*shabu*), controlled precursors, essential chemicals, equipment and paraphernalia utilized for the manufacture of *shabu*. Police authorities, likewise, arrested on the spot Dante Palaganas (Dante) and Andy Tangalin (Andy), the alleged caretakers of the property.<sup>5</sup>

On July 11, 2008, another raid was made on the same property. The property held so many prohibited drug equipment and paraphernalia that the police had to procure a second search warrant to confiscate other materials, this time hidden, they discovered, from plain view.<sup>6</sup>

Dante testified that the private respondents were heavily involved in the operations of the *shabu* laboratory.<sup>7</sup> The private respondents were then members of the Philippine National Police (PNP) Regional Mobile Group (RMG) in La Union, with P/Supt. Borromeo serving as Regional Head.<sup>8</sup> Dante testified that he was instructed by P/Supt. Borromeo to find a lot suitable for a piggery business.<sup>9</sup>

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<sup>4</sup> Id. at 50-51, 59.

<sup>5</sup> Id. at 52-53, 59.

<sup>6</sup> Id. at 54-55, 60.

<sup>7</sup> Id. at 55-56, 60.

<sup>8</sup> Id. at 52, 56-57.

<sup>9</sup> Id. at 57.

*Meyer*

Through the intervention of Andy, Dante eventually found a secluded lot in Upper Bimmotobot. Apprised of this find, P/Supt. Borrromeo told Dante to immediately relay the information to Joselito Artuz (Joselito). Dante met with Joselito and three unnamed Chinese nationals, and together they drove to the site. Joselito was pleased with the location and told Dante to negotiate with the landowner. Subsequently, Joselito, as represented by Dante, leased the property from Eusebio. P/Supt. Borrromeo told Dante to omit his name from any transaction.<sup>10</sup>

As it turned out, there was no piggery business, but a clandestine *shabu* laboratory. Joselito and his Chinese associates systematically transformed the bare land into a thriving hotbed of *shabu*. Dante stood watch as the laboratory efficiently yielded gallons and gallons of *shabu*. The end products were transported to Cesmin Beach Resort in Bauang, La Union and shipped later on to Manila. Dante dutifully reported the day's produce to P/Supt. Borrromeo. SPO1 Abang, on the other hand, closely monitored Dante. Every time they would meet in the RMG headquarters, SPO1 Abang always inquired about the activities of Dante as caretaker of the Upper Bimmotobot laboratory. He once remarked to Dante that his job was easy and he will kill him if he does not do his job. SPO1 Abang had once visited the laboratory himself.<sup>11</sup>

During the surprise inspection on July 8, Dante, after taking some phone calls, approached Police Chief Inspector Erwin Dayag (PC/Insp. Dayag) and SPO1 Alan S. Bañana and offered them ₱20,000,000.00 to instantly desist from the inspection. When PC/Insp. Dayag asked Dante to produce a firearm the latter claimed to possess, Dante talked first with someone on the phone, and then remarked to PC/Insp. Dayag that he knew a Colonel Borrromeo. He then told the caller that his gun was being seized from him by police officers. The police officers traced the numbers Dante called on that day to P/Supt. Borrromeo.<sup>12</sup>

When the police returned with a search warrant on July 9, Dante again called P/Supt. Borrromeo and asked him what he should do. P/Supt. Borrromeo advised Dante to make a run for it.<sup>13</sup>

In an Information dated July 10, 2008, Dante, Andy and several John Does, were accused of violating Section 8, Article II of R.A. No. 9165, in relation to Section 26(d), Article II of the same law.<sup>14</sup> The accusatory portion of the Information reads:

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<sup>10</sup> Id. at 57-58, 205.

<sup>11</sup> Id. at 205-206.

<sup>12</sup> Id. at 206.

<sup>13</sup> Id. at 206-207.

<sup>14</sup> Id. at 47.

*Meyer*

The undersigned Provincial Prosecutor accuses DANTE TOMAS PALAGANAS, ANDY TANGALIN, and several JOHN DOES of the offense of *Violation of Section 8 of Article II of Republic Act 9165 in relation to Sec. 26(d)[,] Article II of the same law*, committed as follows:

That on or about the 9<sup>th</sup> day of July, 2008 and for sometime prior thereto, in the Municipality of Naguilian, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused without authority of law, conspiring, confederating and helping one another, did then and there willfully, unlawfully, and feloniously manufacture, produce, prepare or process methamphetamine hydrochloride or shabu, a dangerous drug of still undetermined volume, directly by means of chemical synthesis.

CONTRARY TO LAW.<sup>15</sup> (Italics in the original)

The Information was later amended to include the name of P/Supt. Borromeo, among others. The Amended Information dated February 18, 2009 reads:

The undersigned Provincial Prosecutor accuses DANTE TOMAS PALAGANAS, ANDY TANGALIN, P/SUPT. DIONICIO C. BORROMEO, JOSELITO ARTUZ y ADEA @ GEORGE CORDERO and OTHER JOHN DOES of the offense of VIOLATION OF SECTION 8[, ] ARTICLE II OF REPUBLIC ACT NO. 9165 IN RELATION TO SEC. 26(d), ARTICLE II OF SAME LAW, committed as follows:

That on or about the 9<sup>th</sup> day of July 2008 and for sometime prior thereto, in the Municipality of Naguilian, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, conspiring, confederating and helping one another under the following manner to wit: accused DANTE TOMAS PALAGANAS and ANDY TANGALIN acted as caretakers, accused JOSELITO ARTUZ y ADEA @ GEORGE CORDERO, as financier, P/SUPT. DIONICIO BORROMEO, acted as protector/coddler and the JOHN DOES who are foreigners, as chemists, and did then and there willfully, unlawfully, and feloniously manufacture, produce, prepare or process methamphetamine hydrochloride or shabu, a dangerous drug, directly by means of chemical synthesis in a parcel of land located at Barangay Bimmotobot, Naguilian, La Union by camouflaging their unlawful activity by making it appear that they are engaged in piggery business.

The crime is attended by the following aggravating circumstances:

- 1.) The manufacturing, producing, preparing and processing activities are undertaken in a place within one hundred meters from residential premises;
- 2.) The manufacturing, producing, preparing and processing activities are concealed under the guise of a legitimate business operation;
- 3.) The manufacturing, producing, preparing and processing activities employed a public official. A police officer who acted as a protector/coddler of the aforesaid illegal activities;
- 4.) Accused John Does are foreigners; and

<sup>15</sup> Id.

*Meyer*

- 5.) An unlicensed firearm is confiscated from the accused Dante Palaganas.

**ACTS CONTRARY TO LAW.**<sup>16</sup> (Emphases and underscoring in the original)

Dante, Andy, P/Supt. Borromeo, and Joselito entered a plea of “Not Guilty” during their arraignment.<sup>17</sup>

This Amended Information was amended anew to include the names of other accused, including SPO1 Abang. The Second Amended Information dated July 3, 2009 reads:

The undersigned Provincial Prosecutor accuses DANTE TOMAS PALAGANAS, ANDY TANGALIN, P/SUPT. DIONICIO C. BORROMELO, JOSELITO A. ARTUZ aka George Cordero; [SPO1] JOEY A. ABANG[,] PO1 RODOLFO S. DAMIAN, JR., PO2 WARLITO BANAN, JR., EUSEBIO TANGALIN and OTHER JOHN DOES of the offense of VIOLATION OF SECTION 8[,] ARTICLE II OF REPUBLIC ACT NO. 9165 IN RELATION TO SECTION 26(d), ARTICLE II OF [THE] SAME LAW, committed as follows:

That on or about the 9<sup>th</sup> day of July 2008 and for sometime prior thereto, in the Municipality of Naguilian, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, conspiring, confederating and helping one another[,] did then and there willfully, unlawfully, and feloniously manufacture, produce, prepare or process methamphetamine hydrochloride or shabu, a dangerous drug, directly by means of chemical synthesis in a parcel of land located at Barangay Bimmutobot, Naguilian, La Union by camouflaging their unlawful activity by making it appear that they are engaged in piggery business.

The crime is attended by the following aggravating circumstances:

1. The manufacturing, producing, preparing and processing activities are undertaken in a place within one hundred meters from residential premises;
2. The manufacturing, producing, preparing and processing activities are concealed under the guise of a legitimate business operation;
3. The manufacturing, producing, preparing and processing activities employed a public official[. A] police [officer] who acted as a protector/coddler of the aforesaid illegal activities;
4. Accused John Does are foreigners; and
5. An unlicensed firearm is confiscated from the accused Dante Palaganas.

**CONTRARY TO LAW.**<sup>18</sup> (Emphasis and underlining in the original)

<sup>16</sup> Id. at 48.

<sup>17</sup> Id. at 99.

<sup>18</sup> Id. at 49.

*Meyer*

On July 12, 2008, Dante released a voluntary confession in the form of a Sworn Statement and assisted by counsels from the Public Attorney's Office. Ten days after, or on July 22, 2008, Dante executed a supplemental statement relative to his confession on July 12, 2008. In both sworn statements, he admitted that he was the caretaker of the Bimmotobot *shabu* laboratory and admitted to the major participation of P/Supt. Borromeo as co-operator thereof.<sup>19</sup>

Dante was qualified as a state witness.<sup>20</sup> His testimony was corroborated on its material points by the testimony of the other witnesses for the prosecution, namely: Anastacio Marquez, Dominador Huligario, SPO4 Ambrosio Sayson, Mayor Rimando, Teresita Abellera, PO1 Jose Bucasas, Reynalyn Valdez, PC/Insp. Marlon Bankey Canam and PO3 Mervin R. Reyes.<sup>21</sup>

The private respondents vehemently denied the accusations against them and alleged that Dante had an axe to grind against them.<sup>22</sup>

P/Supt. Borromeo denied the accusations of Dante against him as follows: that he provided Dante defense lawyers; that he was providing Dante and his wife money for their support; that he used the Provincial Jail Warden to deliver support to Dante; that he looked for a site for the establishment of a *shabu* laboratory; that he has been to Bimmotobot, Naguilian, La Union; that Dante acted as caretaker of the *shabu* laboratory under his instructions; that he sent text messages to Dante in the course of the latter's work as caretaker; that he dealt with Dante during the construction stage and as regards maintenance of the laboratory; and that he knew Joselito. P/Supt. Borromeo, likewise, claimed that since there is no evidence to prove his guilt, Dante is being used to falsely testify against him.<sup>23</sup>

SPO1 Abang, for his part, denied that he had been communicating with Dante. Upon inquiry as to why Dante would falsely testify against him, he guessed that it was probably because they got into a fight sometime in the last week of August 2007.<sup>24</sup>

In its Decision<sup>25</sup> dated June 5, 2013, the Regional Trial Court (RTC) of Bauang, La Union, Branch 67, in Crim. Case No. 3662-BG, found the private respondents guilty beyond reasonable doubt of the crime charged.

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<sup>19</sup> Id. at 55-56.

<sup>20</sup> Id. at 62.

<sup>21</sup> Id. at 61.

<sup>22</sup> Id. at 113-114.

<sup>23</sup> Id.

<sup>24</sup> Id. at 114.

<sup>25</sup> Rendered by Judge Ferdinand A. Fe; id. at 98-128.

*Reyes*

P/Supt. Borromeo was held liable as a co-conspirator, while SPO1 Abang, a protector or coddler. The dispositive portion of the decision reads:

**WHEREFORE**, judgment is hereby rendered finding accused **P/Supt. DIONICIO BORROMEYO y CARBONEL, GUILTY** beyond reasonable doubt of the crime of Violation of Section 8 of Article II of Republic Act No. 9165[,] in relation to Section 26(d), Article II of the Same Law[,] and is hereby sentenced to suffer the penalty of Life Imprisonment and to pay a fine of Ten Million Pesos (Php 10,000,000.00); accused **SPO1 JOEY ABANG y ARCE, GUILTY** beyond reasonable doubt of Violation of Section 8 of Article II of Republic Act 9165 and is hereby sentenced an Indeterminate Sentence of Twelve (12) years and One (1) day[,] as Minimum[,] to Twenty (20) years[,] as Maximum[,] of Imprisonment and to pay a fine of Five Hundred Thousand Pesos (Php 500,000.00), respectively.

Cost of suit to be paid by accused.

SO ORDERED.<sup>26</sup> (Emphases in the original)

On appeal, the CA sustained the private respondents' conviction, but modified the penalty imposed on P/Supt. Borromeo. The appellate court held that the trial court wrongly sentenced P/Supt. Borromeo when it imposed upon the latter the maximum penalty of life imprisonment with the corresponding fine of ₱10,000,000.00 - the penalty imposed upon those who organize, manage or act as a "financier." The CA ratiocinated that since P/Supt. Borromeo was charged and arraigned as a protector or coddler under Section 8,<sup>27</sup> Article II of R.A. No. 9165, the corresponding penalty for protectors or coddlers should be imposed upon him.

In its Decision<sup>28</sup> dated June 29, 2016, the CA disposed as follows:

**WHEREFORE**, premises considered, the appeal is DISMISSED. The assailed Decision dated 5 June 2013 of the [RTC] of Bauang, La Union, Branch 67 in Criminal Case No. 3662-BG is **MODIFIED**. The Accused-Appellants P/Supt. Dionicio Borromeo and PO3 Joey Abang are hereby sentenced to an indeterminate sentence of twelve (12) years and one (1) day[,] as minimum[,] to twenty (20) years[,] as maximum[,] of imprisonment and to pay a fine of five hundred thousand pesos (Php500,000.00).

SO ORDERED.<sup>29</sup> (Emphases in the original)

<sup>26</sup> Id. at 128.

<sup>27</sup> **Section 8.** *Manufacture of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* - x x x  
x x x

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

<sup>28</sup> *Rollo*, pp. 46-90.

<sup>29</sup> Id. at 89-90.

*Meyer*



On August 25, 2016, the CA rendered an Amended Decision<sup>30</sup> whereby it corrected itself. It further amended the dispositive portion to conform with Section 28,<sup>31</sup> Article II of R.A. No. 9165. Section 28 imposes the maximum penalty when the unlawful act is committed by a government official or employee. The CA disposed as follows:

**WHEREFORE**, premises considered, the appeal is **DISMISSED**. The assailed Decision dated 5 June 2013 of the [RTC] of Bauang, La Union, Branch 67 in Criminal Case No. 3662-BG is **MODIFIED**. The Accused-Appellants are hereby sentenced to suffer the penalty of imprisonment for **seventeen (17) years, four (4) months and one (1) day to twenty (20) years** and to pay a fine of five hundred thousand pesos (Php500,000.00). **The penalty of absolute perpetual disqualification from any public office is also imposed upon Accused-Appellants P/Supt. Dionicio Borromeo and PO3 Joey Abang.**

**SO ORDERED.**<sup>32</sup> (Emphases in the original)

Hence, the present petition.

### The Issues

I. WHETHER OR NOT THE CA ERRED WHEN IT REDUCED THE PENALTY TO BE IMPOSED ON P/SUPT. BORROMEO, IN PATENT VIOLATION OF LAW AND JURISPRUDENCE;

II. WHETHER OR NOT THE PENALTY OF LIFE IMPRISONMENT SHOULD LIKEWISE BE IMPOSED ON SPO1 ABANG; and

III. WHETHER OR NOT THE CA ERRED IN APPLYING ARTICLE 65 OF THE REVISED PENAL CODE (RPC) AS BASIS FOR MODIFYING THE PENALTIES IMPOSED ON THE PRIVATE RESPONDENTS.<sup>33</sup>

### Ruling of the Court

**The petition is meritorious.**

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<sup>30</sup> Id. at 92-97.

<sup>31</sup> **Section 28.** - *Criminal Liability of Government Officials and Employees.* – The maximum penalties of the unlawful acts provided for in this Act shall be imposed, in addition to absolute perpetual disqualification from any public office, if those found guilty of such unlawful acts are government officials and employees.

<sup>32</sup> *Rollo*, p. 96.

<sup>33</sup> Id. at 13.

*Meyer*

Generally, the prosecution is precluded from challenging or questioning judgments of acquittal or any judgment rendered in favor of a defendant in a criminal case. This is based on the constitutional prohibition against double jeopardy found in Section 21, Article III of the 1987 Constitution which states that “[no] person shall be twice put in jeopardy of punishment for the same offense.” There is, however, a recognized exception to this rule as discussed in the case of *People, et al. v. Court of Appeals, et al.*,<sup>34</sup> viz.:

As a general rule, the prosecution cannot appeal or bring error proceedings from a judgment rendered in favor of the defendant in a criminal case. The reason is that a judgment of acquittal is immediately final and executory, and the prosecution is barred from appealing lest the constitutional prohibition against double jeopardy be violated. Section 21, Article III of the Constitution provides:

Section 21. No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.

**Despite acquittal, however, either the offended party or the accused may appeal, but only with respect to the civil aspect of the decision. Or, said judgment of acquittal may be assailed through a petition for *certiorari* under Rule 65 of the Rules of Court showing that the lower court, in acquitting the accused, committed not merely reversible errors of judgment, but also exercised grave abuse of discretion amounting to lack or excess of jurisdiction, or a denial of due process, thereby rendering the assailed judgment null and void. If there is grave abuse of discretion, granting petitioner’s prayer is not tantamount to putting private respondents in double jeopardy.<sup>35</sup>**  
(Citations omitted and emphasis Ours)

Here, the CA undoubtedly exercised grave abuse of discretion amounting to lack or excess of jurisdiction, when it downgraded the penalty imposed on private respondents. As such, any correction or modification in the penalty previously imposed will not violate the prohibition against double jeopardy.

To recapitulate, the private respondents were charged and found guilty by the trial court for violation of Section 8, Article II of R.A. No. 9165, in relation to Section 26(d), Article II of same law. The pertinent sections provide:

**Section 8. *Manufacture of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed**

<sup>34</sup> 755 Phil. 80 (2015).

<sup>35</sup> Id. at 97-98.

*Meyer*

**upon any person, who, unless authorized by law, shall engage in the manufacture of any dangerous drug.**

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person, who, unless authorized by law, shall manufacture any controlled precursor and essential chemical.

The presence of any controlled precursor and essential chemical or laboratory equipment in the clandestine laboratory is a *prima facie* proof of manufacture of any dangerous drug. It shall be considered an aggravating circumstance if the clandestine laboratory is undertaken or established under the following circumstances:

- (a) Any phase of the manufacturing process was conducted in the presence or with the help of minor/s;
- (b) Any phase of the manufacturing process was established or undertaken within one hundred (100) meters of a residential, business, church or school premises;
- (c) Any clandestine laboratory was secured or protected with booby traps;
- (d) Any clandestine laboratory was concealed with legitimate business operations; or
- (e) Any employment of a practitioner, chemical engineer, public official or foreigner.

The maximum penalty provided for under this Section shall be imposed upon any person, who organizes, manages or acts as a “financier” of any of the illegal activities prescribed in this Section.

**The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person, who acts as a “protector/coddler” of any violator of the provisions under this Section.**

X X X X

**Section 26. *Attempt or Conspiracy.* –Any attempt or conspiracy to commit the following unlawful acts shall be penalized by the same penalty prescribed for the commission of the same as provided under this Act:**

- (a) Importation of any dangerous drug and/or controlled precursor and essential chemical;
- (b) Sale, trading, administration, dispensation, delivery, distribution and transportation of any dangerous drug and/or controlled precursor and essential chemical;
- (c) Maintenance of a den, dive or resort where any dangerous drug is used in any form;
- (d) **Manufacture of any dangerous drug and/or controlled precursor and essential chemical; and**
- (e) Cultivation or culture of plants which are sources of dangerous drugs. (Emphases and underlining Ours)

*Meyer*

The RTC held that the prosecution proved beyond reasonable doubt the existence of conspiracy to manufacture dangerous drugs. That P/Supt. Borromeo, as co-conspirator, played a key role based on the evidence adduced by the prosecution. As to SPO1 Abang, the trial court held him liable as protector or coddler as he was merely acting on orders given to him by his superior, P/Supt. Borromeo, in furtherance of the latter's role and interest in the conspiracy. When the case was appealed to the CA, the findings of the RTC were affirmed, but the CA modified the penalty insofar as P/Supt. Borromeo was concerned. In so doing, the CA ratiocinated that the corresponding penalty for protectors or coddlers should be imposed upon P/Supt. Borromeo since the latter was charged and arraigned under the Second Amended Information dated July 3, 2009 for merely acting as a protector or coddler under Section 8, Article II of R.A. No. 9165.

The undersigned Provincial Prosecutor accuses DANTE TOMAS PALAGANAS, ANDY TANGALIN, P/SUPT. DIONICIO C. BORROMELO, JOSELITO A. ARTUZ aka George Cordero; [SPO1] JOEY A. ABANG, PO1 RODOLFO S. DAMIAN, JR., PO2 WARLITO BANAN, JR., EUSEBIO TANGALIN and OTHER JOHN DOES of the offense of VIOLATION OF SECTION 8[,] ARTICLE II OF REPUBLIC ACT NO. 9165 IN RELATION TO SECTION 26(d), ARTICLE II OF [THE] SAME LAW, committed as follows:

That on or about the 9<sup>th</sup> day of July 2008 and for sometime prior thereto, in the Municipality of Naguilian, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, conspiring, confederating and helping one another[,] did then and there[,] willfully, unlawfully, and feloniously manufacture, produce, prepare or process methamphetamine hydrochloride or shabu, a dangerous drug, directly by means of chemical synthesis in a parcel of land located at Barangay Bimmotobot, Naguilian, La Union by camouflaging their unlawful activity by making it appear that they are engaged in piggery business.

The crime is attended by the following aggravating circumstances:

- a. The manufacturing, producing, preparing, and processing activities are undertaken in a place within one hundred meters from residential premises;
- b. The manufacturing, producing, preparing and processing activities are concealed under the guise of a legitimate business operation;
- c. The manufacturing, producing, preparing and processing activities employed a public official[. A] police [officer] who acted as a protector/coddler of the aforesaid illegal activities;
- d. Accused John Does are foreigners; and
- e. An unlicensed firearm is confiscated from the accused Dante Palaganas.

**CONTRARY TO LAW.**<sup>36</sup> (Emphases and underlining in the original)

<sup>36</sup> *Rollo*, p. 49.

*Mejia*

Interestingly, in said decision, the CA itself opined that P/Supt. Borromeo may not have merely acted as protector or coddler but may have actually participated in the conspiracy to manufacture dangerous drugs. The pertinent portion of the CA decision reads:

The prosecution presented in evidence, among others, the written extrajudicial confession of Palaganas, where he disclosed that [P/Supt. Borromeo] initially ordered him to scout for a lot where they could construct a piggery. He would then personally inspect the lots that he suggested. When he thought that one of the lots that was suggested would be ideal for their piggery, he instructed Palaganas to coordinate with accused Artuz so that he could likewise inspect it. When both [P/Supt. Borromeo] and accused Artuz agreed that the lot found on Upper Bimmotobot, Naguilian, La Union was to their liking, [P/Supt. Borromeo] monitored the construction of the piggery through Palaganas. [P/Supt. Borromeo] also monitored the manufacture of shabu through Palaganas. He even berated him when he wanted to stop working as a caretaker of the clandestine shabu laboratory because of the foul odor. Evidently, [P/Supt. Borromeo] provided both moral assistance to and moral ascendancy over Palaganas.

Palaganas also recounted that Accused-Appellant SPO1 Abang dissuaded him from leaving the piggery. He would regularly check on him and kept him in line whenever Palaganas would drop by Camp Oscar Florendo, Parian, San Fernando City, La Union. He would threaten to kill him whenever the latter would falter in his duties as caretaker of the clandestine shabu laboratory. He even personally visited the clandestine shabu laboratory on Upper Bimmotobot, Naguilian, La Union sometime in July 2005.

Evidently, Accused-Appellant P/Supt. Borromeo may not be merely acting as protector or coddler but may have actually participated in the conspiracy to manufacture shabu in their clandestine laboratory. Although Palaganas testified in court that unidentified Chinese nationals were the ones who cooked shabu on four (4) separate occasions, he also testified that Accused-Appellant P/Supt. Borromeo used his influence, power and position to preserve the clandestine nature of the conduct of manufacturing of shabu.

It follows then that Accused-Appellant P/Supt. Borromeo's liability may be that of a principal. Then again, P/Supt. Borromeo was specifically charged and arraigned under the Amended Information for acting as protector or coddler. As such, his participation in the commission of the offense is akin to that of an accomplice or even an accessory. Clearly, there is a variance in the participation or complicity of Accused-Appellant P/Supt. Borromeo. Convicting Accused/Appellant P/Supt. Borromeo as a principal under an information charging him as an accomplice or accessory would be in contravention of his constitutional right to be informed of the nature and cause of the accusation against him under Section 14, Article III of the 1987 Constitution because a lesser responsibility does not necessarily include a greater responsibility.

We find and so hold that the trial court wrongly sentenced the Accused Appellant P/Supt. Borromeo with the maximum penalty of life imprisonment and to pay a fine of Ten Million Pesos, Philippine

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Currency (Php10,000,000.00). The said penalty is imposed upon those who were found to be guilty beyond reasonable doubt of manufacturing dangerous drugs and upon those who organize, manage or act as a “financier”. x x x.<sup>37</sup> (Citations omitted)

The foregoing clearly shows P/Supt. Borrromeo’s active contribution and participation in the conspiracy which undoubtedly makes him a co-conspirator. In this regard, the Court’s ruling in *Bahilidad v. People*<sup>38</sup> is instructive:

There is conspiracy “when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.” Conspiracy is not presumed. Like the physical acts constituting the crime itself, the elements of conspiracy must be proven beyond reasonable doubt. **While conspiracy need not be established by direct evidence, for it may be inferred from the conduct of the accused before, during and after the commission of the crime, all taken together, however, the evidence must be strong enough to show the community of criminal design. For conspiracy to exist, it is essential that there must be a conscious design to commit an offense. Conspiracy is the product of intentionality on the part of the cohorts.**

**It is necessary that a conspirator should have performed some overt act as a direct or indirect contribution to the execution of the crime committed. The overt act may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his co-conspirators by being present at the commission of the crime or by exerting moral ascendancy over the other co-conspirators.** Hence, the mere presence of an accused at the discussion of a conspiracy, even approval of it, without any active participation in the same, is not enough for purposes of conviction.<sup>39</sup> (Citations omitted and emphasis Ours)

A finding of conspiracy requires the same degree of proof required to establish the crime—proof beyond reasonable doubt.<sup>40</sup> This was clearly evaluated and discussed by the RTC in its decision, *viz.*:

**From the evidence adduced by the prosecution, the Court is convinced that P/Supt. Dionicio Borrromeo is part of the conspiracy that established and operated the clandestine shabu laboratory in Barangay Bimmotobot, Naguilian, La Union.**

**Borrromeo played a key role in the conspiracy. It was him who initially ordered Palaganas to scout for a lot where a piggery could be put up. He personally checked the places found by Palaganas and rejected those that were earlier shown by Palaganas for being near to populated areas. He also directed Palaganas to contact Artuz so that the latter could inspect the places that were scouted.** Artuz arrived on

<sup>37</sup> Id. at 79-80, 89.

<sup>38</sup> 629 Phil. 567 (2010).

<sup>39</sup> Id. at 575.

<sup>40</sup> *People v. De Chavez, et al.*, 633 Phil. 468, 482 (2010).

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two separate occasions to inspect the scouted places. The first was when the (sic) inspected the lot found by Palaganas near the cockpit arena of Naguilian in the company of Chinese nationals which he eventually rejected because there were houses nearby. The second when Palaganas found the lot in Upper Bimmotobot which he described as “beautiful” and Artuz with Chinese companions arrived for an ocular inspection. The lot at Upper Bimmotobot was finally approved by Artuz and after the execution of a Memorandum of Agreement between the owner Eusebio Tangalin and Palaganas who represented Artuz. The lot was improved and constructions were introduced thereon with the money provided by Artuz. Later, the place became the site of the Bimmotobot Clandestine Shabu Laboratory. **All these activities were monitored by Borromeo, through Palaganas who was reporting to him regularly.**

**When the Shabu laboratory was already operating, Palaganas regularly reported to Borromeo about the operation. The results of the cooking sessions of the chemicals** by the Chinese men particularly the number of containers of cooked chemicals **were reported periodically by Palaganas to Borromeo.** After each cooking session, the cooked chemicals placed inside the containers were brought to Cesmin Beach Resort and eventually to Manila, by the men of Artuz. Thereafter, Artuz paid Palaganas fat sums of money as reward.

**When the inspection of the place was conducted by the team from the municipal government of Naguilian, Palaganas was in contact with Borromeo through cellphone and even namedropped him,** when PCI Dayag asked him where his firearm was. Likewise, **when Search Warrant No. 2008-08 was being implemented, Palaganas also talked with Borromeo through cellphone.** The cellphone conversations were registered in the simpacks of the cellphone of Palaganas which were later transcribed (Exhibit “MMM”) by PCI Lizardo and IO3 Azurin and the CIDG, which showed the telephone number of Borromeo – 09209180208 as confirmed by the Telephone Directory of PNP PRO 1 (Exhibit “BBB” and sub-markings). Incidentally, when Borromeo testified in Court, he admitted that the aforesaid number (09209180208) belongs to him.<sup>41</sup> (Emphases and underlining Ours)

On the basis of the foregoing and the evidence adduced by the prosecution, there is no iota of doubt that Borromeo is a co-conspirator under the provisions of Section 8, in relation to Section 26(d), Article II of R.A. No. 9165. It, likewise, bears stressing that although the prosecution, at the time of the filing of the Information, used the words “protector” or “coddler” to specify Borromeo’s participation in the conspiracy, the Court considers the terminology as immaterial there being a clear finding of conspiracy. The use of the words “protector” or “coddler” should not be taken to mean that his liability as co-conspirator is automatically negated or reduced.

Here, both the First and Second Amended Informations charged all the accused with violation of Section 26(d), Article II of R.A. No. 9165 in relation to Section 8, Article II of the same law, or conspiracy to

<sup>41</sup> *Rollo*, p. 121.

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manufacture dangerous drugs. The first amendment was made to include the name of P/Supt. Borrromeo, among others, and specified his participation in the said conspiracy, *i.e.*, as protector or coddler. The Information was later further amended to include the name of SPO1 Abang as co-conspirator. It must be emphasized, however, that although the final amendment no longer specified the role or participation of each accused in the conspiracy, it does not alter the fact that P/Supt. Borrromeo's participation as co-conspirator, specifically as protector or coddler, was proven beyond reasonable doubt.

The evidence on record clearly showed that the participation of P/Supt. Borrromeo, who at that time occupied a position in the government moreso the PNP, was diabolical in all respects as he used his power and influence and had a major participation as co-operator in the maintenance of the clandestine shabu laboratory.

P/Supt. Borrromeo's participation was not limited to merely protecting the violators nor facilitating their escape. His co-respondent and co-conspirators regularly reported to and updated him of the operations in the shabu laboratory. He monitored all the illegal activities through Dante, who acted under his control and carried out specific instructions coming from him. These acts sufficiently established his pivotal role in the conspiracy. Thus, there was no logical reason for the CA to downgrade his liability from that of a co-conspirator to a mere coddler or protector.

As to the participation and liability of SPO1 Abang, the Court is convinced that he is also a co-conspirator. Contrary to the RTC's findings, SPO1 Abang was not just acting on orders of his boss, P/Supt. Borrromeo. SPO1 Abang was, in fact, ensuring the regular and orderly operations of the Bimmotobot *shabu* factory. Moreover, the evidence adduced by the prosecution sufficiently established his knowledge of and active participation in the conspiracy, to wit: (1) SPO1 Abang was the recruiter and handler of Dante; (2) Dante reported to both private respondents; (3) SPO1 Abang regularly checked and inquired about Dante's work at Upper Bimmotobot. On one occasion, Dante attempted to leave his job in the *shabu* laboratory, but SPO1 Abang employed force and threatened his life. He allegedly told Dante, "Just stay in your work because that is an easy job, you just watch over the place, if you will not do it, I will kill you";<sup>42</sup> (4) SPO1 Abang was also the bodyguard of P/Supt. Borrromeo.

SPO1 Abang's participation ensured the success of the operations of the clandestine *shabu* laboratory. As such, he cannot be considered a mere accessory to the involvement of P/Supt. Borrromeo.

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<sup>42</sup> Id. at 122.

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As to the penalty imposed, it was erroneous for the CA to apply Article 65 of the Revised Penal Code (RPC) as this is not applicable to R.A. No. 9165. Section 98 of R.A. No. 9165 clearly states:

**Section 98. Limited Applicability of the Revised Penal Code.** – Notwithstanding any law, rule or regulation to the contrary, the provisions of the Revised Penal Code (Act No. 3814), as amended, shall not apply to the provisions of this Act, except in the case of minor offenders. Where the offender is a minor, the penalty for acts punishable by life imprisonment to death provided herein shall be *reclusion perpetua* to death.

The CA, likewise, incorrectly applied the doctrine in *People v. Mantalaba*,<sup>43</sup> which is diametrically opposed and not on all fours with the case at bar, with *Mantalaba* pertaining to minor offenders, and the accused in this case being police officers.

Generally, it is erroneous to designate the penalty imposed under a special penal law with the terms provided for in the [RPC]. The only exception in such case is when the special penal law imposed penalties that were actually taken from the [RPC] in its technical nomenclature. In such exceptional cases, the duration, correlation and legal effects of the penalties under the [RPC] would also be observed.<sup>44</sup> (Citations omitted)

The elementary rule in statutory construction is that when the words and phrases of the statute are clear and unequivocal, their meaning must be determined from the language employed and the statute must be taken to mean exactly what it says.<sup>45</sup> If a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is expressed in the Latin maxims “*index animi sermo*” (speech is the index of intention) and “*verba legis non est recedendum*” which translates to “from the words of a statute there should be no departure.”<sup>46</sup>

The Court reiterates that R.A. No. 9165 is clear and leaves no room for interpretation. Any person convicted under the said law, regardless of the penalty imposed, cannot avail of the graduations under Article 65 of the RPC as R.A. No. 9165 is a special law. The penalty imposed is life imprisonment, which is an indivisible penalty.

Finally, it cannot be gainsaid that the mandate of the PNP is to enforce the law, prevent and control crimes, maintain peace and order, and ensure public safety and internal security with the active support of the

<sup>43</sup> 669 Phil. 461 (2011).

<sup>44</sup> *Rollo*, p. 95.

<sup>45</sup> *Padua v. People*, 581 Phil. 489, 500-501 (2008).

<sup>46</sup> Agpalo, Ruben, *Statutory Construction*, 3<sup>rd</sup> Edition.

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community.<sup>47</sup> Police officers, like the private respondents, in the guise of law protecting officials, are conspicuous examples of wolves in sheep's clothing. As members of the police force, it is their topmost priority to protect the people and uphold the law, but instead, they took advantage of their power and position to satisfy their own greed.

**WHEREFORE**, premises considered, the petition is hereby **GRANTED**. The Decision dated June 29, 2016 and Amended Decision dated August 25, 2016 of the Court of Appeals, in CA-G.R. CR HC No. 06271, are hereby **REVERSED** and **SET ASIDE** for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

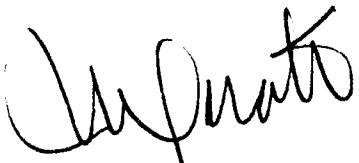
Judgment is hereby rendered finding private respondent **P/SUPT. DIONICIO BORROMEO y CARBONEL GUILTY** beyond reasonable doubt of the crime of Violation of Section 8, Article II of Republic Act No. 9165, in relation to Section 26(d), Article II of the same law and is hereby sentenced to suffer the penalty of Life Imprisonment and to pay a fine of Ten Million Pesos (₱10,000,000.00). Private respondent **SPO1 JOEY ABANG y ARCE** is also found **GUILTY** beyond reasonable doubt of the crime of Violation of Section 8, Article II of Republic Act No. 9165, in relation to Section 26(d), Article II of the same law and is hereby sentenced to suffer the penalty of Life Imprisonment and to pay a fine of Ten Million Pesos (₱10,000,000.00).

The penalty of absolute perpetual disqualification from any public office is also imposed upon the private respondents.

**SO ORDERED.**

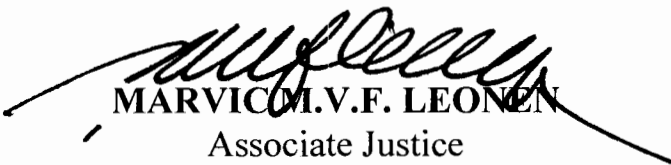
  
**ANDRES B. REYES, JR.**  
Associate Justice

**WE CONCUR:**

  
**DIOSDADO M. PERALTA**  
Associate Justice  
Chairperson

<sup>47</sup>

PNP Mission and Vision, <[www.pnp.gov.ph](http://www.pnp.gov.ph)> visited last March 4, 2019.



**MARVIC M.V.F. LEONEN**  
Associate Justice




**RAMON PAUL L. HERNANDO**  
Associate Justice



**HENRI JEAN PAUL B. INTING**  
Associate Justice

**A T T E S T A T I O N**

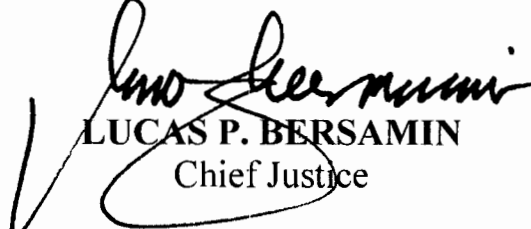
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**DIOSDADO M. PERALTA**  
Associate Justice  
Chairperson, Third Division

**C E R T I F I C A T I O N**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**LUCAS P. BERSAMIN**  
Chief Justice