Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,	**G.R. No. 249459**
Petitioner,	Members:
- versus-	**PERLAS-BERNABE, *SAJ.*,** *Chairperson,* **LAZARO-JAVIER, M. LOPEZ, ROSARIO, LOPEZ J., * *JJ.***
NOEL SABATER *y* ULAN,	Promulgated:
Respondent.	JUN 14 2021

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DECISION

LAZARO-JAVIER, *J.*:

The Case

Petitioner People of the Philippines, through the Office of the Solicitor General (OSG), seeks to reverse and set aside the following dispositions of the Court of Appeals in CA-G.R. SP. No. 158342:

1. Resolution[1] dated January 28, 2019 dismissing the petition for late filing; and

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* Designated as additional member per Special Order No. 2822 dated April 7, 2021.

[1] Penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Ma. Luisa Quijano-Padilla and Germano Francisco D. Legaspi; *rollo*, p. 61.

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2. Resolution[2] dated September 17, 2019 denying reconsideration.

Antecedents

Under Information[3] dated December 19, 2016, the Naga City Prosecutor's Office charged respondent Noel Sabater *y* Ulan with violation of Section 5, Republic Act No. (RA) 9165, thus:

> That on November 4, 2016, 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 sell, dispense and deliver to poseur-buyer PO1 Reimon Joy N. Paaño one (1) pc. small heat-sealed transparent sachet with markings RJNP-AN 11/04/16, weighing 0.049 gram, containing white crystalline substance 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.
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> ACTS CONTRARY TO LAW.

The case was raffled to the Regional Trial Court-Br. 24, Naga City as Criminal Case No. 2016-0935. On arraignment, respondent pleaded not guilty. Thereafter, trial ensued.[4]

Approximately five (5) months after the prosecution had formally offered its evidence, respondent, on June 28, 2018 filed a motion for plea bargaining, proposing to plead *guilty* to a lesser offense, *i.e.* violation of Section 12, RA 9165 for *possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs,* citing A.M. No. 18-03-16-SC entitled *Adoption of the Plea Bargaining Framework in Drugs Cases*.[5]

The prosecution opposed, citing DOJ Circular No. 027 dated June 26, 2018. It provides that when an accused is charged with selling less than five (5) grams of shabu in violation of Section 5, RA 9165, as here, he or she may plead guilty to the lesser offense of illegal possession of dangerous drugs under Section 11(3) of RA 9165, but not under Section 12 of the same law.[6]

The Ruling of the Trial Court

By Order[7] dated August 2, 2018, the trial court granted respondent's motion, nullifying DOJ Circular No. 027 in the process, thus:

> WHEREFORE, the Motion is GRANTED. This Court declares that DOJ Circular 27 is contrary to the Rules of Court, and encroachment on the Rule-Making Power of the Supreme Court of the Philippines. The

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[2] *Id.* at 66.
[3] *Id.* at 108.
[4] *Id.* at 18.
[5] *Id.*
[6] *Id.* at 19-20.
[7] *Id.* at 68-71.

> Opposition has no valid factual and legal basis. Plea bargaining is allowed in these cases.
>
> SO ORDERED.[8]

Hence, respondent's not guilty plea was vacated and he was re-arraigned. This time, respondent pleaded *guilty* to violation of Section 12, RA 9165.[9]

As borne in its Judgment[10] dated September 12, 2018, the trial court rendered a verdict of conviction against respondent for violation of Section 12, RA 9165, *viz.*:

> WHEREFORE, judgment is hereby rendered finding the accused NOEL SABATER y ULAN, GUILTY beyond reasonable doubt of the offense under Section 12, Article II of R.A. 9165.
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> Applying the Indeterminate Sentence Law, the accused is hereby sentenced to suffer imprisonment of six months and one day as minimum to four (4) years as maximum. He is further ordered to pay a fine of Fifty Thousand Pesos (Php50,000.00). He is further directed to submit himself to a drug dependency test. If he admits drug use, or deny it but is found positive after the drug dependency test, he shall undergo treatment and rehabilitation for a period of not less than 6 months.
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> In the service of his sentence, the accused shall be credited with the period of his preventive detention pursuant to Article 29 of the Revised Penal Code, as amended.
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> SO ORDERED.[11]

The Ruling of the Court of Appeals

Aggrieved, the People elevated the case to the Court of Appeals via *certiorari*, docketed as CA-G.R. SP. No. 158342. But by Resolution[12] dated January 28, 2019, the Court of Appeals dismissed the petition for late filing. It found that prosecution received the trial court's Order dated August 2, 2018 six (6) days later on August 8, 2018. Thus, it had sixty (60) days therefrom or until October 9, 2018 to file a petition for *certiorari*. As it was, the OSG filed its recourse on November 13, 2018 only or thirty five (35) days late.[13]

The Court of Appeals denied reconsideration on September 17, 2019.[14]

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[8] *Id.* at 71-72.
[9] *Id.* at 21.
[10] *Id.* at 119.
[11] *Id.* at 119-120.
[12] Penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Ma. Luisa Quijano-Padilla and Germano Francisco D. Legaspi; *id.* at 61.
[13] *Id.* at. 62-63.
[14] *Id.* at 66.

The Present Petition

The People now prays anew that respondent's plea to a lesser offense of violation of Section 12, RA 9165 be set aside, and the case, remanded to the trial court for further proceedings.[15] It faults the Court of Appeals for ruling that its petition for *certiorari* was filed out of time. It brings to fore the fact that government functions in a bureaucracy and certain procedures had to be observed before they may elevate a case to a higher court.[16] It is because they followed procedure that the OSG only received copy of the trial court's Order dated August 2, 2018 on November 8, 2018, after the lapse of the sixty day period for filing a petition for *certiorari*.[17] The People, thus, prays that it be accorded leniency as regards the period for filing its recourse before the Court of Appeals.

The People likewise argues that the Court of Appeals should have resolved the case on the merits, rather than focusing on mere technicalities.[18] On the merits, the People faults the Court of Appeals for effectively sustaining respondent's plea bargaining proposal despite the apparent lack of consent and over the vigorous opposition of the prosecutor. It asserts that while the landmark case of ***Estipona v. Hon. Lobrigo***[19] allowed plea bargaining in drug cases, it did not deviate from the consensual nature and essence of plea bargaining.[20] Thus, when the trial court granted respondent's motion for plea bargaining despite the prosecution's objection, the trial court effectively encroached upon the government's prerogative to prosecute crimes.[21]

At any rate, the trial court gravely abused its discretion when it allowed respondent to plead to a lesser offense which is not necessarily included in the offense originally charged.[22]

Too, the trial court gravely abused its discretion when it declared DOJ Circular No. 027 contrary to the Rules of Court and an encroachment into the rule-making power of the Court. Instead of choosing between DOJ Circular No. 27 and A.M. No. 18-03-16-SC, the trial court should have harmonized these issuances.[23]

In his comment,[24] respondent notes that the People has repeatedly acknowledged its belated filing of its petition for *certiorari* before the Court of Appeals without offering cogent justification for the lapse. He also notes that the People did not move for reconsideration of the trial court's Order dated August 2, 2018, a condition *sine qua non* for filing a petition for *certiorari*.

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[15] *Id.* at. 50-51.
[16] *Id.* at 28.
[17] *Id.* at 27-28.
[18] *Id.* at 33.
[19] 816 Phil. 789, 806 (2017).
[20] *Rollo*, pp. 35-41.
[21] *Id.* at 43-46.
[22] *Id.* at 41.
[23] *Id.* at 46-48.
[24] *Id.* at 116.

In any event, courts have authority to overrule the prosecution's objections in plea bargaining, especially so when strict adherence to DOJ Circular No. 027 would defeat the principle behind the Court's ruling in ***Estipona*** which nullified the "no-plea bargaining" provision of RA 9165. A contrary view is tantamount to a surrender of the court's sole and supreme authority to command the course of the case.

Besides, there is wisdom in allowing the accused in drugs cases to plea bargain to the lesser offense of violation of Section 12, RA 9165 from Section 5 of the same law where the quantity of drugs involved is miniscule: 1) to provide a platform for rehabilitation of small-time drug offenders; 2) to curb police operatives' nefarious practice of utilizing buy-bust as a tool for abuse; and 3) to unclog our courts and focus the government's resources to the real bane of society.

Finally, ***Pascua v. People***[25] already resolved whether an accused charged with violation of Section 5, RA 9165 may plea bargain to the lesser offense of violation of Section 12 of the same law.

Threshold Issues

I

Did the Court of Appeals commit reversible error when it dismissed the People's petition for *certiorari* for belated filing?

II

Did the trial court commit grave abuse of discretion when it granted respondent's proposal to plead guilty to the lesser offense of violation of Section 12, RA 9165 without the consent and over the objection of the prosecutor?

III

Did the trial court commit grave abuse of discretion when it declared DOJ Circular No. 027 an encroachment of the Court's rule-making power?

Ruling

We grant the petition.

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[25] G.R. No. 250578, September 07, 2020.

The Court of Appeals committed reversible error when it declared that the petition for *certiorari* was filed out of time

Section 4, Rule 65 of the Rules of Court decrees:

> **Section 4.** *When and where petition filed.* — The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.
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> xxxx
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> No extension of time to file the petition shall be granted except for compelling reason and in no case exceeding fifteen (15) days.

To recall, the sole reason for the dismissal of CA-G.R. SP. No. 158342 was its supposed belated filing. According to the Court of Appeals, the 60-day period under Section 4, Rule 65 is reckoned from the prosecution's receipt of the trial court's Order dated August 2, 2018 granting respondent's motion for plea bargaining. Thus, the petition was filed thirty five (35) days late on November 13, 2018.

But contrary to the Court of Appeals' ruling as well as the allegations of respondent and even the OSG, the 60-day reglementary period should have been counted from the prosecution's receipt of the trial court's Judgment dated September 12, 2018, rather than the Order dated August 2, 2018. ***People v. Majingcar***[26] elucidates:

> Under Rule 65 of the Rules of Court, a petition for certiorari must be filed within sixty (60) days from notice of the judgment, order, or resolution sought to be assailed. Here, the People claims that it reckoned the sixty (60) day period from September 18, 2018 when the prosecutor received a copy of the trial court's judgment of conviction that was rendered on the same day. Remarkably, neither respondents nor the Court of Appeals disagrees that indeed, on September 18, 2018, the trial rendered the assailed judgment and it was on the same day, too, when the prosecutor had notice thereof. It follows, therefore, that starting from September 18, 2018, the sixty day period expired on November 17, 2018. So when the People filed its petition for certiorari on November 16, 2018, it did so well within the reglementary period.
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> At any rate, the Court of Appeals clearly had its way of counting the sixty days. Although it did not mention from what date it started counting, logic dictates that it started counting on September 5, 2018, when respondents were re-arraigned and allowed to plead "guilty" to the lesser offense of violation of Section 12, Article II of RA 9165 in Criminal Case Nos. 2016-0774 and 2016-0775. We arrive at this conclusion because the Court of Appeals referred to November 4, 2018 as the last day for filing the petition for certiorari. Counting backward, the Court of Appeals appears

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

> to have started counting from September 5, 2018, the date when respondents got re-arraigned and pleaded guilty to the lesser offense of violation of Section 12, Article II of RA 9165 in both Crim. Case Nos. 2016-0774 and 2016-0775.
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> **But this counting is erroneous. For it was still much later, on September 18, 2018, when the prosecutor actually had notice of the trial court's judgment of conviction that was rendered on the same day. Hence, the People correctly reckoned the sixty day period from September 18, 2018 or until November 17, 2018. Therefore, we repeat that when the People subsequently filed its petition for certiorari on November 16, 2018, it was well within the reglementary period.**
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> **To clarify, the Plea Bargaining Resolutions dated August 6, 2018 and September 1, 2018 are mere interlocutory orders which cannot be the subject of a petition for certiorari.** To allow a challenge thereof via Rule 65 will not only breed undue delay in the administration of justice but a much frowned upon piecemeal attacks against the court's mere interim issuances. Consistent with consideration of expediency, the proper remedy is a one time challenge against the court's final judgment on the merits. To allow otherwise would result in a never ending trial, not to mention the clogging of th dockets of appellate court with *ad infinitum* petitions of aggrieved parties-litigants against every interlocutory order of the trial court. (emphases added)

Unfortunately, the OSG never alleged when the People received notice of the Judgment dated September 12, 2018. Assuming that the People received notice on the same day judgment was promulgated, the OSG had until November 11, 2018 to file a petition for *certiorari* before the Court of Appeals. But since the deadline fell on a Sunday, the petition became due on November 12, 2018. As it was, CA-G.R. SP. No. 158342 was filed on November 13, 2018 or one (1) day late.

Indeed, the OSG admitted that CA-G.R. SP. No. 158342 was belatedly filed. Generally, failure to avail of any remedy against an adverse ruling within the reglementary period would allow it to lapse into finality. Once final, it becomes immutable and unalterable. It may no longer be modified or amended by any court in any manner even if the purpose of the modification or amendment is to correct perceived errors of law or fact. This is the doctrine of immutability of judgment.[27]

But the principle of immutability of judgment is not absolute and admits of four (4) exceptions, *viz.*:[28]

(1) Correction of clerical errors;

(2) So-called *nunc pro tunc* entries which cause no prejudice to any party;

(3) **Void judgments**; and

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[27] *National Housing Authority v. Court of Appeals*, 731 Phil. 400, 405 (2014).
[28] *FGU Insurance Corp. v. Regional Trial Court of Makati City*, 659 Phil. 117, 123 (2011).

> (4) Whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable. (emphasis added)

As will be discussed below, the third exception is applicable here.

The trial court's judgment was void as it granted respondent's plea-bargaining proposal, *sans* the consent and over the opposition of the prosecution

Section 2, Rule 116 of the Rules of Court embodies the rule on plea-bargaining, thus:

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

Verily, the consent of the prosecutor is a condition precedent before an accused may validly plead guilty to a lesser offense.[29] As Associate Justice Rodil V. Zalameda explained in his Separate Concurring Opinion in ***Sayre v. Xenos***:[30] *The reason for this is obvious.* ***The prosecutor has full control of the prosecution of criminal actions.*** *Consequently, it is his duty to always prosecute the proper offense, not any lesser or graver one, when the evidence in his hands can only sustain the former.*

Where the prosecution withholds its consent, the trial court cannot proceed to approve a plea bargain. There is no meeting of the minds, hence, there can be no plea bargaining "agreement" to speak of. Should the trial court nevertheless approve the plea bargain over the prosecution's objection, it would be doing so in grave abuse of discretion. Justice Zalameda further explained:

> In choosing to respect the prosecution's discretion to give or withhold consent, the Court is not surrendering any of its powers. Instead, it is an exercise of sound judicial restraint. Courts cannot forcefully insist upon any of the parties to plead in accordance with the *Plea Bargaining Framework.* To emphasize, **when there is no unanimity between the prosecution and the defense, there is also no plea bargaining agreement to speak of.** If a party refuses to enter a plea in conformity with the *Plea Bargaining Framework*, **a court commits grave abuse of discretion should it unduly impose its will on the parties** by approving a plea bargain and issuing a conviction based on the *framework.*

Grave abuse of discretion is such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse must be grave as

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[29] *People vs. Villarama*, 285 Phil. 723, 727 (1992).
[30] G.R. Nos. 244413 & 244415-16, February 18, 2020.

where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility. It must also be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.[31]

Here, the trial court acted with grave abuse of discretion or without jurisdiction when despite the vehement objection of the prosecution, it peremptorily, in clear violation of Section 2, Rule 116 of the Rules of Court, approved respondent's proposal to plead guilty to the lesser offense of violation of Section 12, RA 9165, in lieu of the original charge of violation of Section 5 of the same law.

Otherwise stated, the trial court acted without or beyond its jurisdiction when it rendered the assailed Judgment dated September 12, 2018. ***Mercury Drug Corporation v. Sps. Huang*** teaches that such judgment is actually void, hence, has no legal or binding effect, thus:[32]

> **Void judgments produce "no legal [or] binding effect." Hence, they are deemed non-existent.** They may result from the "lack of jurisdiction over the subject matter" or a lack of jurisdiction over the person of either of the parties. **They may also arise if they were rendered with grave abuse of discretion amounting to lack or excess of jurisdiction.** (emphases added)

Consequently, the Judgment dated September 12, 2018 is void, ineffectual, and could never lapse into finality.

DOJ Circular No. 27 does not encroach upon the rule making power of the Court

Another. DOJ Circular No. 027 does not infringe upon the Court's rule making power under the Constitution. This matter has been categorically resolved in the landmark ruling of ***Sayre***,[33] thus:

> In this petition, A.M. No. 18-03-16-SC is a rule of procedure established pursuant to the rule-making power of the Supreme Court that serves as a framework and guide to the trial courts in plea bargaining violations of R.A. 9165.
>
> Nonetheless, a plea bargain still requires mutual agreement of the parties and remains subject to the approval of the court. The acceptance of an offer to plead guilty to a lesser offense is not demandable by the accused as a matter of right but is a matter addressed entirely to the sound discretion of the trial court.
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> Section 2, Rule 116 of the Rules of Court expressly states:
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> Sec. 2. Plea of guilty to a lesser offense. — At arraignment, **the accused, with the consent of the offended party and the prosecutor, may**

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[31] *Neri v. Yu*, G.R. No. 230831, September 05, 2018.
[32] 817 Phil. 452, 434 (2017).
[33] G.R. Nos. 244413 & 244415-16, February 18, 2020.

> be allowed by the trial court to plead guilty to a lesser offense which is necessarily included in the offense charged. After arraignment but before trial, the accused **may** still be allowed to plead guilty to said lesser offense after withdrawing his plea of not guilty. No amendment of the complaint or information is necessary.
>
> The use of the word "may" signifies that the trial court has discretion whether to allow the accused to make a plea of guilty to a lesser offense. Moreover, plea bargaining requires the consent of the accused, offended party, and the prosecutor. It is also essential that the lesser offense is necessarily included in the offense charged.
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> Taking into consideration the requirements in pleading guilty to a lesser offense, **We find it proper to treat the refusal of the prosecution to adopt the acceptable plea bargain for the charge of Illegal Sale of Dangerous Drugs provided in A.M. No. 18-03-16-SC as a continuing objection that should be resolved by the RTC.** This harmonizes the constitutional provision on the rule making power of the Court under the Constitution and the nature of plea bargaining in Dangerous Drugs cases. **DOJ Circular No. 27 did not repeal, alter, or modify the Plea Bargaining Framework in A.M. No. 18-03-16-SC.**
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> **Therefore, the DOJ Circular No. 27 provision pertaining to acceptable plea bargain for Section 5 of R.A. 9165 did not violate the rule-making authority of the Court. DOJ Circular No. 27 merely serves as an internal guideline for prosecutors to observe before they may give their consent to proposed plea bargains.** (Emphases added)

This ruling by the Court *En Banc* further compels the invalidation of the assailed trial court judgment and its concomitant orders.

ACCORDINGLY, the petition is **GRANTED**. The Resolutions dated January 28, 2019 and September 17, 2019 in CA-G.R. SP. No. 158342 are **REVERSED** and **SET ASIDE**.

The Judgment dated September 12, 2018 and the concomitant orders of the Regional Trial Court-Branch 24, Naga City in Criminal Case No. 2016-0935 are **VOID** for having been issued in grave abuse of discretion. The trial court is **ORDERED** to proceed with the criminal case against respondent Noel Sabater y Ulan with utmost dispatch.

SO ORDERED.

AMY C. LAZARO-JAVIER
Associate Justice

WE CONCUR:

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

MARIO V. LOPEZ
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

ATTESTATION

I attest that the conclusion 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.

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

CERTIFICATION

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.

ALEXANDER G. GESMUNDO
Chief Justice