

SPECIAL TWENTIETH DIVISION

[CA-G.R. CR NO. 00906, June 27, 2014]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAMIL GOLEZ Y MERCADO, ACCUSED-APPELLANT.

D E C I S I O N

AZCARRAGA-JACOB, J.:

On appeal is the 26 October 2007 Decision^[1] of the Regional Trial Court, Branch 69, Silay City in *Criminal Case No. 6191-69* entitled *People of the Philippines v. Ramil Golez y Mercado* which adjudged accused-appellant guilty beyond reasonable doubt for the crime of Violation of Section 11, Article II of Republic Act No. 9165,^[2] as amended, the decretal portion of which reads:

WHEREFORE, premises considered, this Court finds accused, RAMIL GOLEZ y MERCADO, GUILTY of Violation of Section 11 of Republic Act No. 9165 (The Comprehensive Dangerous Drugs Act of 2002), as his guilt had been established by the prosecution beyond any reasonable doubt.

Accordingly, this Court hereby sentences accused, Ramil Golez y Mercado to suffer the penalty of imprisonment of from (*sic*) TWELVE (12) YEARS and ONE (1) DAY to FOURTEEN (14) YEARS of Reclusion Temporal, the same to be served by him at the National Penitentiary, Muntinlupa City, Province of Rizal.

Accused, Ramil Golez y Mercado is further ordered to pay a fine of Three Hundred Thousand Pesos (<P>300,000.00), Philippine Currency.

The two (2) small crumpled heat-sealed transparent plastic sachets containing Methamphetamine Hydrochloride, locally known as "Shabu", with an aggregate weight of 0.01 gram, and the crumpled sachet with traces of Shabu are ordered remitted to the Philippine Drug Enforcement Agency (PDEA), at Bacolod City, Negros Occidental for proper disposition.

In the service of the sentence imposed on him by this Court, accused named shall be given full credit for the entire period of his detention pending trial.

Accused is remanded to the custody of the Jail Warden of the Bureau of Jail Management and Penology (BJMP) of Silay city, Negros Occidental, until he is fully committed to the National Penitentiary, Muntinlupa City, Rizal.

NO COSTS.

SO ORDERED.

THE ANTECEDENTS

The Information^[3] indicts accused-appellant Ramil Golez y Mercado (appellant) of Violation of Sec. 11, Art. II of Republic Act 9165 (The Comprehensive Dangerous Drugs Act of 2002) reads as follows:

That sometime in the evening of August 25, 2006, in the City of Silay, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, without authority of law, did then and there, willfully, unlawfully and feloniously have in his possession and control two (2) small crumpled heat-sealed transparent plastic packs containing methamphetamine hydrochloride (*shabu*), a dangerous drug, with the following recorded weights 1.) 0.01 gram; 2.) traces.

CONTRARY TO LAW.

In the assailed Decision, the trial court summarized the facts as follows:

When arraigned on September 11, 2006, accused, Ramil Golez y Mercado assisted by his counsel, Atty. Danilo T. Pabalinas of the Public Attorney's Office at Silay City, Negros Occidental, entered a plea of Not Guilty.

On Pre-trial, the prosecution and the defense jointly stipulated that:

1. This Court has jurisdiction to take cognizance of this case;
2. Ramil Golez is the accused in this case;
3. The existence of Search Warrant No. 2006-06 dated August 25, 2006 issued by this Court;
4. When Search Warrant No. 2006-06 was implemented, accused named was present;
5. The search at the residence of accused named was witnessed by Kagawad, Jose Lopez of Barangay Rizal, Silay City, Negros Occidental, and Mr. Rufo Deita, Jr. y Lamberto, a Radio Reporter of Aksyon Radio;
6. Accused, Ramil Golez, was taken into custody by the members of the raiding team prior to the implementation of Search Warrant No. 2006-06 on his residence; and
7. The house of accused named has three rooms and only two of these rooms were searched.

The prosecution made its case to rest on the oral testimonies of SPO1 Dante Victor Escorpion y Torrento, PO1 William Abellar, Jr. y Jonco, and Rufo Deita, Jr. y Lamberto. Documentary and physical evidence for the prosecution are the Sworn Statement of SPO1 Dante Victo Escorpion y Torrento, marked as Exhibit "A", with its submarkings, "A-1" and "A-1-A";

the Sworn Statement of PO1 William Abellar, Jr. y Jonco marked as Exhibit "B", with submarkings, "B-1" and "B-1-A"; the Excerpt from the Police Blotter of the Philippine National Police of Silay City dated August 25, 2006, marked as Exhibit "C"; Chemistry Report no. D-257-2006 dated August 24, 2006, marked as Exhibit "D", with its submarkings, "D-1" and "D-2"; Chemistry Report No. D-255-2006, dated August 24, 2006 marked as Exhibit "E", with its submarkings, "E-1" and "E-2"; Initial Laboratory Report No. DT-082-2006 dated August 28, 2006, marked as Exhibit "F"; a copy of Search Warrant No. 2006-06 dated August 25, 2006 marked as Exhibit "G"; and a Certificate of Inventory dated August 25, 2006, marked as Exhibit "H", with its submarkings, "H-1" to "H-3". In the Order dated April 13, 2007, all of the exhibits, as listed, were admitted by this Court in evidence subsequent to a formal offer.

Defense, on the other hand, presented as its witnesses, Marissa Kho y Hernaez, Rowena Golez y Mercado, Jose Lopez y Jopson, and accused, Ramil Golez y Mercado. Defense offered no documentary nor (*sic*) physical evidence.

Submission is made by the prosecution that in the morning of August 17, 2006, the Office of the Vice Control Section of the Philippine National Police of Silay City, received an information that accused, Ramil Golez y Mercado, was selling illegal drugs locally known as Shabu in the vicinity of Purok Mainuswagon of Barangay Guinhalaran, Silay City where he was residing. At about 7:00 o'clock in the evening of August 23, 2006, a test-buy operation was conducted by the Office of the Vice Control Section of the Philippine National Police of Silay City, then headed by SPO1 Dante Victor Escorpion y Torrento on accused named in the vicinity of his house. Using an unnamed asset and PO1 William Abellar, Jr. y Jonco, a sachet of Shabu was purchased from the accused for P400.00. The one (1) heat-sealed transparent plastic sachet with white crystalline substances in it subject of the test-buy operation was brought to the Philippine National Police Crime Laboratory in Bacolod City for examination. Subsequently, it yielded a positive result for the presence of Methamphetamine Hydrochloride (Shabu), having a weight of 0.02 grams. Chemistry Report No. D-255-2006 dated August 24, 2006 (Exhibit "E", prosecution) was issued by said office in consequence.

On August 25, 2006, the Office of the Vice Control Section of the Philippine National Police of Silay City applied for a Search Warrant on the house of accused, Ramil Golez y Mercado, located at Purok Mainuswagon, Barangay Guinhalaran, Silay City, Negros Occidental. Search Warrant No. 2006-06 dated August 25, 2006 (Exhibit "G", prosecution) was issued by this Court authorizing a search of the house of the accused. The referred Search Warrant was implemented at about 9:30 in the evening of August 25, 2006 by a team composed of SPO1 Dante Victor Escorpion y Torrento as the leader, with PO1 William Abellar, Jr. y Jonco, CE Anthony Sabadisto, as the members in the company of Rufo Deita, Jr. y Lamberto, an Action Radio Reporter, and Kagawad Jose Lopez y Jopson as witnesses. The designated searcher was SPO1 Dante Victor Escorpion y Torrento, and PO1 William Abellar, Jr. y Jonco was his assistant searcher.

On the way to the house of the accused at Purok Mainuswagon, Barangay Guinhalaran, Silay City, the team saw accused, Ramil Golez y Mercado in a drinking session at Purok Mangingisda, of the same Barangay. The members of the raiding team approached him and presented and showed him a copy of Search Warrant No. 2006-06 dated August 25, 2006 authorizing a search of his house. He was invited by the policemen to go with them to his house. The accused adamantly refused and demanded that he be accompanied by a barangay official. Barangay Kagawad Jose Lopez y Jopson came. He went with the accused and the police officers proceeded to the house of the accused. In the meantime, SPO Dante Victor Escorpion and Mr. Deita left the accused to the custody of PO1 William Abellar and Civilian Agent Antonio Sabadisto and SPO1 Dante Victor Escorpion and Rufo Deita went ahead of them to the house to be searched. Present at the house of the accused was the sister of the accused, Ramil Golez y Mercado, a certain "Tinat". A copy of the Search Warrant was presented to her by SPO1 Dante Victor Escorpion y Torrento. Shortly, accused, Ramil Golez y Mercado with PO1 William Abellar, Jr. y Jonco, Civilian Agent Antonio Sabadisto and Kagawad Jose Lopez y Jopson came. The search was commenced.

There were three (3) rooms in the two (2) storey house of the accused, Ramil Golez y Mercado. Only two (2) rooms of the houses were subjected to searches. In the search done on one of the rooms in the second floor of the house, two (2) heat-sealed transparent plastic sachets with white crystalline substances in them of suspected Shabu were found in a pillow. The recovery of said items was witnessed by Kagawad Jose Lopez y Jopson, Action Radio Reporter Rufo Deita, Jr. y Lamberto, and the accused himself.

As a handcuff was to be placed on him, the accused suddenly grabbed the two (2) heat-sealed transparent plastic sachets of suspected Shabu which laid on the floor and hurriedly placed them in his mouth. He vigorously chewed and tried to swallow them. PO1 William Abellar, Jr. y Jonco held on the neck of the accused and squeezed it so as to force him to spit out said plastic sachets. Named police officer failed to succeed. Thinking that the accused did swallow the referred sachets, the police officers and the team proceeded to prepare the needed papers to document the search done and its results. Later as the accused was to be led out of the room, he (accused) discreetly spat out the crumpled plastic sachets from his mouth in the hope that no one would notice. PO1 William Abellar, however, saw him in said act. Named police officer retrieved the crumpled sachets. The two (2) heat-sealed transparent plastic sachets of suspected Shabu were subjected to laboratory examinations at the Philippine National Police (PNP) Crime Laboratory at Bacolod City. The white crystalline substance found in one of the crumpled sachets or what was left of it was found to be Positive for Shabu having a weight of 0.01 gram. The other one crumpled sachet contained traces of Shabu. These are the findings in Chemistry Report No. D-257-2006 dated August 26, 2006 (Exhibit "D", prosecution).

A denial was made by the defense of the submitted recovery of the two (2) plastic sachets of suspected Shabu at the house of accused, Ramil

Golez y Mercado, in the evening of August 25, 2006 in the implementation of Search Warrant No. 2006-06 dated August 25, 2006 by the elements of the Vice Control Section of the Philippine National Police of Silay City. Accused also disclaimed the occurrence (*sic*) of the submitted test buy on him on August 23, 2006.

Assertion is made by the accused that at about 9:00 o'clock in the evening of August 25, 2006, he was at the store located at Purok Paglaum which was near Purok Mainuswagon the place of his residence, to return a rented CD tape when he met some friends, then in a drinking session. Shortly, thereafter, policemen came and forced named accused to go with them. A commotion ensued as the accused resisted. Barangay Kagawad Jose Lopez y Jopson was summoned by an unnamed constituent of the Barangay. He hurriedly proceeded to where the accused and the policemen where. After being apprised by the policemen that the accused was merely invited by them to his (accused's) house at Purok Mainuswagon, Barangay Guinhalaran, Silay City to witness the implementation of a duly issued search warrant, Barangay Kagawad Jose Lopez y Jopson prevailed upon the accused to go with the policemen. Barangay Kagawad Jose Lopez y Jopson accompanied the accused.

A search was conducted of a room in the second floor of the house of the accused by Police Officers Dante Victor Escorpion y Torrento and William Abellar, Jr. y Jonco, for approximately 30 minutes in the presence of the accused, accused's sister only known as "Tinat", Rufo Deita y Lamberto and Barangay Kagawad Jose Lopez. Named policemen failed to find any illegal drug, more specifically Methamphetamine Hydrochloride or Shabu. Police Officer Dante Victor Escorpion then complained of the heat in the room and asked for a glass of water, prompting the sister of the accused to get out of (*sic*) room to comply with the said request. Police Officer Dante Victor Escorpion y Torrento then conducted a second search of the very same room he had just searched. Again he found no illegal drugs. The foregoing, notwithstanding, SPO1 Dante Victor Escorpion y Torrento ordered civilian employee Antonio Sabadisto to handcuff the accused. The accused protested vehemently. SPO1 Dante Victor Escorpion y Torrento put out two (2) plastic sachets and pushed them hard into accused's mouth. The accused tried to stop named officer by holding on to the hands of SPO1 Dante Victor Escorpion y Torrento even as civilian employee Antonio Sabadisto squeezed his (accused's) neck. Barangay Kagawad Jose Lopez y Jopson and the sister of the accused admonished SPO1 Dante Victor Escorpion y Torrento and the civilian employee Antonio Sabadisto. Eventually a handcuff was placed on the wrist of the accused. Accused was able to spat out the two (2) plastic sachets from his mouth. Police Officer William Abellar, Jr. y Jonco picked up the crumpled sachets.

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ASSIGNMENT OF ERRORS

After trial on the merits, the trial court rendered the assailed Judgment. Resolute to