

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

Ponente: AZCARRAGA-JACOB, J.

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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 (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 Victor 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 show his innocence, appellant pleads before this Court a review of his conviction based on this sole error supposedly committed by the court a quo:

THE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY OF THE CRIME CHARGED WHERE THE EVIDENCE OF THE PROSECUTION FAILED TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

THE COURT'S RULING

The appeal is meritorious.

To hold an accused liable of violating Section 11, Article II of R.A. No. 9165 which prohibits the possession of illegal drugs, the following elements should be established: (a) the accused is in possession of an item or object which is identified to be a prohibited drug; (b) such possession is not authorized by law; and (c) the accused freely or consciously possessed the prohibited drug.[4]

In this case at hand, it was not proven that appellant was in possession of illegal drugs. There was no evidence

proving that the seized drugs indeed existed. Assuming there was, it was neither identified nor presented in court. Absence of the element of possession renders all other elements nugatory.

Here, one of the intended signatories of said inventory receipt to comply with legal requisites, barangay kagawad Lopez did not sign the said document since according to him, no such illegal items were found during the search. That refusal to sign may be elicited from the testimony of a prosecution witness, SPO1 Escorpion. The relevant portion of his testimony quoted as follows:

Q:

You presented them to the witness and prepared an Inventory of Receipt?

A:

Yes, sir.

Q:

Rufo Deita signed this document, however, Barangay Kagawad Lopez refused to sign it?

A:

Yes, sir.

Q:

And Barangay Kagawad Lopez refused to sign it because he was protesting on clear words that there was no recovery of the plastic sachets?

A:

He was not protesting, he was just saying that there was no recovery of the items seized.[5]

Lopez's refusal to sign the said inventory receipt was corroborated by another prosecution witness, PO1 Abellar during his direct-examination, viz:[6]

Q:

Then what happened?

A:

SPO1 Dante Victor Escorpion recorded the recovered items in the Inventory and have it signed. Action Radio Reporter Rufo Deita but Kagawad Jose Lopez refused to sign the document.

Q:

Did you ask him why he refused to sign?

A:

Yes, Ma'am.

Q:

What was his reason?

A:

His reason was that since the shabu placed on the plastic sachets were already chewed on, there was no longer any recovery of shabu.

The fact that a key witness to the implementation of a search warrant refused to sign the inventory receipt is an ominous indication that something was amiss in the proceedings, and that We should be guarded in the appreciation of the events that transpired during the search.

The dangerous drug itself, the shabu in this case, constitutes the very corpus delicti of the offense. R.A. No. 9165 imposed upon law enforcers the duty to establish the chain of custody of the seized drugs to ensure the integrity of the corpus delicti. Through proper exhibit handling, storage, labeling and recording, the identity of the seized drug is insulated from doubt from their confiscation up to their presentation in court.[7] The evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the appellant, otherwise, the prosecution for possession under Republic Act No. 9165 fails.[8]

Thus, the failure of the agents to comply with such requirement raised doubt whether what was submitted for laboratory examination and presented in court was the same drug and/or paraphernalia as that actually recovered from the appellant.[9]

The police officers alleged having confiscated the remains of the two (2) sachets of shabu consisting of 0.01 gram after both were swallowed by the appellant. However, they did not mark the illegal items, lest take pictures of the same to prove that such existed. Hence, the identity and integrity of the contrabands were not preserved.

In essence, to establish the chain of custody of the confiscated drug, the High Court explained in *Lopez v. People*, viz:[10]

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witnesses' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.

This chain of custody rule requires that the marking of the seized items should be done in the presence of the apprehended violator and immediately upon confiscation to ensure that they are the same items that enter the chain and are eventually the ones offered in evidence.[11]

Despite the police officers' knowledge of a deficiency, that is, the marking of the seized drugs, no other document was prepared by the raiding team. As evinced from PO1 Abellar's testimony:

Q:

Were there other records which you have prepared aside from the Certificate of Inventory?

A:

No, nothing more.[12]

As reiterated in *People v. Guzon*,[13] the marking of an item that is seized from the accused is vital in the chain of custody, to wit:

Crucial in proving chain of custody is the marking of the seized drugs or other related items immediately after they are seized from the accused. Marking after seizure is the starting point in the custodial link, thus it is vital

that the seized contraband are immediately marked because succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed at the end of criminal proceedings, obviating switching, "planting," or contamination of evidence.

As herein-above mentioned, the police officers failed to mark, and take photographs of, the seized items. It bears emphasis the police officers were able to secure a search warrant prior to their operation. They should, therefore, have been prepared to conduct the search strictly following the lawful manner of conducting a search with warrant. Yet the police officers did not mark the plastic packs of shabu seized inside appellant's house notwithstanding the fact that an inventory receipt was even prepared while they were still inside the house of appellant. Despite the fact that only 0.01 gram of shabu remained after appellant tried to swallow the evidence seized, the police officers could have utilized it for marking purposes. Thus, failure to comply with this first link negates the whole chain of custody.

While the Supreme Court recognizes substantial adherence to the requirement of R.A. No. 9165 and its implementing rules and regulations, not perfect adherence, is what is demanded of police officers attending to drugs cases, still, such officers must present justifiable reason for their imperfect conduct and show that the integrity and evidentiary value of the seized items had been preserved. Here, however, no satisfactory explanation was proffered by the police officers for their lapses. Thus, appellant's contention that no drugs were marked because there were no confiscated drugs at all is worth noting.

From a cautious evaluation of the testimonies of the prosecution witnesses emerges the strong doubt that the prosecution's case stands on solid ground.

In *People v. Garcia*,^[14] the Higher Court enumerated several cases dealing with the legal repercussions of failing to comply with Section 21 of Republic Act No. 9165, thus:

In *People v. Orteza*, the Court, in discussing the implications of the failure to comply with Paragraph 1, Section 21, Article II of R.A. No. 9165, declared:

In *People v. Laxa*, where the buy-bust team failed to mark the confiscated marijuana immediately after the apprehension of the accused, the Court held that the deviation from the standard procedure in anti-narcotics operations produced doubts as to the origins of the marijuana. Consequently, the Court concluded that the prosecution failed to establish the identity of the corpus delicti.

The Court made a similar ruling in *People v. Kimura*, where the Narcom operatives failed to place markings on the seized marijuana at the time the accused was arrested and to observe the procedure and take custody of the drug.

More recently, in *Zarraga v. People*, the Court held that the material inconsistencies with regard to when and where the markings on the shabu were made and the lack of inventory on the seized drugs created reasonable doubt as to the identity of the corpus delicti. The Court thus acquitted the accused due to the prosecution's failure to indubitably show the identity of the shabu.

We reached the same conclusion in *People v. Nazareno* and *People v. Santos, Jr.*, and recently, in the cases of *People v. Dela Cruz* and *People v. De la Cruz* where we again stressed the importance of complying with the prescribed procedure. We also held that strict compliance is justified under the rule that penal laws shall be construed strictly against the government, and liberally in favor of the accused. (Emphasis supplied).

Taking into account the foregoing legal, procedural and jurisprudential pronouncements, We find the police officers in the case at bar woefully failed to observe what was required of them.

The flaws in the conduct of the post-seizure custody of the dangerous drug recovered from appellant, juxtaposed with the non-presentation of key personnel who handled it, militate against the prosecution's case because they do not only create reasonable doubt on the identity of the corpus delicti but also tend to discredit, if not totally negate, the claim of regularity in the conduct of official police operation.[15]

Based on the circumstances, when taken in light of the several other lapses in the chain of custody that attend the present case, forms part of a gross, systematic, or deliberate disregard of the safeguards that are drawn by the law,[16] sufficient to create reasonable doubt as to the culpability of the accused.

The rule is invariable whatever may be the reputation of the accused, for the law presumes his innocence unless and until the contrary is shown.[17] In dubio pro reo. When moral certainty as to culpability hangs in the balance, acquittal on reasonable doubt inevitably becomes a matter of right.[18] Herein appellant must be exonerated from criminal liability.

In *Reyes v. CA*,[19] the Supreme Court emphasized that a conviction must stand on the strength of the prosecution's evidence, not on the weakness of the defense which the accused put up. Evidence proving the guilt of the accused must always be beyond reasonable doubt. If the evidence of guilt falls short of this requirement, the Court will not allow the accused to be deprived of his liberty. His acquittal should come as a matter of course.[20]

WHEREFORE, the 26 October 2007 Decision[21] of the Regional Trial Court, Branch 69, Silay City in Criminal Case No. 6191-69 is REVERSED and SET ASIDE. Appellant Ramil Golez y Mercado is hereby ACQUITTED of the crime charged.

SO ORDERED.

Ingles,[*] and Quijano-Padilla, JJ., concur.

[*] Acting Chairman per Office Order No. 14-14-GTI dated 26 June 2014 vice Justice Hernando.

[1] Records, pp. 138-146, Rollo, pp. 57-65.

[2] Comprehensive Dangerous Dugs Act of 2002.

[3] Appellant's Brief, Rollo, p. 45; Record, pp. 1-2.

[4] *People v. Evora*, G.R. No. 182418, 8 May 2009.

[5] TSN dated 8 January 2007, p. 26.

[6] TSN dated 29 January 2007, pp. 6-7.

[7] *People v. Magat*, G.R. No. 179939, 29 September 2008.

[8] *People v. Denoman*, G.R. No. 171732, 15 August 2009, citing *People v. Robles*, G.R. No. 177220, 24 April 2009.

[9] *Id.*

[10] G.R. No. 172953, 30 April 2008 as cited in *People v. Garcia*, G.R. No. 173480, 25 February 2009.

[11] *People v. Sanchez*, G.R. No. 175832, 15 October 2008.

[12] TSN dated 29 January 2007, p. 8.

[13] G.R. No. 199901, 9 October 2013.

[14] G.R. No. 173480, 25 February 2009.

[15] *People v. Evora*, G.R. No. 182418, 8 May 2009.

[16] *People v. Umipang*, G.R. No. 190321, 25 April 2012.

[17] *Mallillin v. People*, G.R. No. 172953, 30 April 2008, 553 SCRA 619 (2008), citing *People v. Laxa*, G.R. No. 138501, 20 July 2001, 361 SCRA 622, 627.

[18] *Mallillin v. People*, *ibid.*

[19] G.R. No. 180177, 18 April 2012, 670 SCRA 148.

[20] *Id.*

[21] Records, pp. 138-146.

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