

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROBERTO SALANGUIT Y KO, ACCUSED-APPELLANT.

G.R. Nos. 133254-55. April 19, 2001

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision,[1] dated January 27, 1998, of the Regional Trial Court, Branch 96, Quezon City, finding accused-appellant Roberto Salanguit y Ko guilty of violation of §16 of Republic Act No. 6425, as amended, and sentencing him accordingly to suffer imprisonment ranging from six (6) months of arresto mayor, as minimum, to four (4) years and two (2) months of prision correccional, as maximum, and of §8 of the same law and sentencing him for such violation to suffer the penalty of reclusion perpetua and to pay a fine of P700,000.00.

Charges against accused-appellant for violations of R.A. No. 6425 were filed on December 28, 1995. In Criminal Case No. Q-95-64357, the information alleged:

That on or about the 26th day of December 1995, in Quezon City, Philippines, the said accused, did then and there willfully, unlawfully and knowingly possess and/or use 11.14 grams of Methamphetamine Hydrochloride (Shabu) a regulated drug, without the necessary license and/or prescription therefor, in violation of said law.

CONTRARY TO LAW.[2]

In Criminal Case No. Q-95-64358, the information charged:

That on or about the 26th day of December 1995, in Quezon City, Philippines, the said accused not being authorized by law to possess or use any prohibited drug, did, then and there willfully, unlawfully and knowingly have in his possession and under his custody and control 1,254 grams of Marijuana, a prohibited drug.

CONTRARY TO LAW.[3]

When arraigned on May 21, 1996, accused-appellant pleaded not guilty,[4] whereupon he was tried.

Three witnesses were presented by the prosecution: P/Insp. Sonia S. Ludovico, forensic chemist and chief of the Physical Science Branch of the Philippine National Police Crime Laboratory, Senior Inspector Rodolfo Aguilar of the Narcotics Command, Camp Crame, Quezon City, and PO3 Rolando Duazo of Station 10, Kamuning, Quezon City, a field operative. The prosecution evidence established the following:

On December 26, 1995, Sr. Insp. Aguilar applied for a warrant[5] in the Regional Trial Court, Branch 90, Dasmariñas, Cavite, to search the residence of accused-appellant Robert Salanguit y Ko on Binhagan St., Novaliches, Quezon City. He presented as his witness SPO1 Edmund Badua, who testified that as a poseur-buyer, he was able to purchase 2.12 grams of shabu from accused-appellant. The sale took place in accused-appellant's room, and Badua saw that the shabu was taken by accused-appellant from a cabinet inside his room. The application was granted, and a search warrant was later issued by Presiding Judge Dolores L. Español.

At about 10:30 p.m. of December 26, 1995, a group of about 10 policemen, along with one civilian informer, went to the residence of accused-appellant to serve the warrant.[6]

The police operatives knocked on accused-appellant's door, but nobody opened it. They heard people inside the house, apparently panicking. The police operatives then forced the door open and entered the house.[7]

After showing the search warrant to the occupants of the house, Lt. Cortes and his group started searching the house.[8] They found 12 small heat-sealed transparent plastic bags containing a white crystalline substance, a paper clip box also containing a white crystalline substance, and two bricks of dried leaves which appeared to be marijuana wrapped in newsprint[9] having a total weight of approximately 1,255 grams.[10] A receipt of the items seized was prepared, but the accused-appellant refused to sign it.[11]

After the search, the police operatives took accused-appellant with them to Station 10, EDSA, Kamuning, Quezon City, along with the items they had seized.[12]

PO3 Duazo requested a laboratory examination of the confiscated evidence.[13] The white crystalline substance with a total weight of 2.77 grams and those contained in a small box with a total weight of 8.37 grams were found to be positive for methamphetamine hydrochloride. On the other hand, the two bricks of dried leaves, one weighing 425 grams and the other 850 grams, were found to be marijuana.[14]

For the defense, accused-appellant testified in his own behalf. His testimony was corroborated by his mother-in-law, Soledad Arcano.

Accused-appellant testified that on the night of December 26, 1995, as they were about to leave their house, they heard a commotion at the gate and on the roof of their house. Suddenly, about 20 men in civilian attire, brandishing long firearms, climbed over the gate and descended through an opening in the roof.[15]

When accused-appellant demanded to be shown a search warrant, a piece of paper inside a folder was waved in front of him. As accused-appellant fumbled for his glasses, however, the paper was withdrawn and he had no chance to read it.[16]

Accused-appellant claimed that he was ordered to stay in one place of the house while the policemen conducted a search, forcibly opening cabinets and taking his bag containing money, a licensed .45 caliber firearm, jewelry, and canned goods.[17]

The policemen left at around 12:30 a.m. of December 27, 1995, and, after putting handcuffs on accused-appellant, took him with them to the NARCOM on EDSA, Quezon City, where accused-appellant was detained.[18]

Accused-appellant's mother-in law, Soledad Arcano, corroborated his testimony. Arcano testified that the policemen ransacked their house, ate their food, and took away canned goods and other valuables.[19]

After hearing, the trial court rendered its decision, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered:

1. In Criminal Case No. Q-95-64357, for violation of Sec. 16, Republic Act No. 6425, as amended, finding the accused ROBERTO SALANGUIT y KO guilty beyond reasonable doubt of the crime charged and he is hereby accordingly sentenced to suffer an indeterminate sentence with a minimum of six (6) months of arresto mayor and a maximum of four (4) years and two (2) months of prision correccional; and,
2. In Criminal Case No. Q-95-64358, for violation of Sec. 8, Republic Act No. 6425, as amended, finding the accused ROBERTO SALANGUIT y KO guilty beyond reasonable doubt of the crime charged and he is hereby accordingly sentenced to suffer reclusion perpetua and to pay a fine of P700,000.00.

The accused shall further pay the costs of suit.

The 11.14 grams of methamphetamine hydrochloride and the 1,254 grams of marijuana bricks are hereby confiscated and condemned for disposition according to law. The evidence custodian of this Court is hereby directed to turn such substances over to the National Bureau of Investigation pursuant to law.

SO ORDERED.[20]

Hence this appeal. Accused-appellant contends that -

THE COURT A QUO GRAVELY ERRED IN DECLARING THE SEARCH WARRANT VALID

THE COURT A QUO ERRED IN CONVICTING ACCUSED-APPELLANT FOR ILLEGAL POSSESSION OF METHAMPHETAMINE HYDRO-CHLORIDE (SHABU)

THE COURT A QUO GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT FOR VIOLATION §8, R.A. NO. 6425

THE COURT A QUO ERRED IN ADMITTING IN EVIDENCE THE TWO (2) BRICKS OF MARIJUANA

THE COURT A QUO ERRED IN NOT FINDING THAT THE POLICEMEN USED EXCESSIVE FORCE IN ENFORCING THE SEARCH WARRANT.

Accused-appellant is contesting his conviction on three grounds. First, the admissibility of the shabu allegedly recovered from his residence as evidence against him on the ground that the warrant used in obtaining it was invalid. Second, the admissibility in evidence of the marijuana allegedly seized from accused-appellant pursuant to the "plain view" doctrine. Third, the employment of unnecessary force by the police in the execution of the warrant.

First. Rule 126, §4 of the Revised Rules on Criminal Procedure[21] provides that a search warrant shall not issue except upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the things to be seized which may be anywhere in the Philippines.

In issuing a search warrant, judges must comply strictly with the requirements of the Constitution and the Rules of Criminal Procedure. No presumption of regularity can be invoked in aid of the process when an officer undertakes to justify its issuance.[22] Nothing can justify the issuance of the search warrant unless all the legal requisites are fulfilled.

In this case, the search warrant issued against accused-appellant reads:

SEARCH WARRANT NO. 160

For: Violation of RA 6425

SEARCH WARRANT

TO ANY PEACE OFFICER:

G R E E T I N G S :

It appearing to the satisfaction of the undersigned after examining under oath SR. INSP. RODOLFO V. AGUILAR, PNP and his witness SPO1 EDMUND M. BADUA, PNP that there is probable cause to believe that ROBERT SALANGUIT has in his possession and control in his premises Binhagan St., San Jose, Quezon City as shown in Annex "A", the properties to wit:

UNDETERMINED QUANTITY OF SHABU AND DRUG PARAPHERNALIA

which should be seized and brought to the undersigned.

You are hereby commanded to make an immediate search anytime of the day/night of the premises above-described and forthwith seize and take possession of the above-stated properties and bring said properties to the undersigned to be dealt with as the law directs.

GIVEN UNDER MY HAND this 26th day of December 1995 at Imus, Cavite, Philippines.

(SGD.) DOLORES L. ESPAÑOL

J u d g e

Accused-appellant assails the validity of the warrant on three grounds: (1) that there was no probable cause to search for drug paraphernalia; (2) that the search warrant was issued for more than one specific offense; and (3) that the place to be searched was not described with sufficient particularity.

Existence of Probable Cause

The warrant authorized the seizure of "undetermined quantity of shabu and drug paraphernalia." Evidence was presented showing probable cause of the existence of methamphetamine hydrochloride or shabu. Accused-appellant contends, however, that the search warrant issued is void because no evidence was presented showing the existence of drug paraphernalia and the same should not have been ordered to be seized by the trial court.[23]

The contention has no merit. To be sure, SPO1 Edmund Badua, the intelligence officer who acted as a poseur-buyer, did not testify in the proceedings for the issuance of a search warrant on anything about drug paraphernalia. He stated:

Q -

Being a member of the Intelligence and Operation Section, NMDU, NARCOM, do you remember if you were assigned into a monitoring or surveillance work?

A -

Yes, sir.

Q -

Of what particular assignment or area were you assigned for monitoring or surveillance?

A -

Its within the Quezon City area particularly a house without a number located at Binhagan St., San Jose, Quezon City, sir.

Q -

Do you know the person who occupies the specific place?

A -

Yes, sir, he is ROBERT SALANGUIT @ Robert.

Q -

Are you familiar with that place?

A -

Yes, sir, as part of my surveillance, I was able to penetrate inside the area and established contract with ROBERT SALANGUIT alias Robert through my friend who introduced me to the former.

Q -

In what particular occasion did you meet ROBERT SALANGUIT alias Robert?

A -

When I was introduced by my friend as a good buyer and drug pusher of shabu, sir.

Q -

Were you able to buy at that time?

A -

Yes, sir.

Q -

How much if you can still remember the amount involved?

A -

I was able to buy two point twelve (2.12) grams of shabu in the amount of Two Thousand Seven Hundred Fifty (P2,750.00) pesos, sir.

Q -

Having established contact with ROBERT SALANGUIT @ Robert, do you know where the stuff (shabu) were being kept?

A -

Yes, sir, inside a cabinet inside his room.

Q -

How were you able to know the place where he kept the stuff?

A -

When I first bought the 2.12 grams of shabu from him, it was done inside his room and I saw that the shabu was taken by him inside his cabinet.

Q -

Do you know who is in control of the premises?

A -

Yes, sir, it was ROBERT SALANGUIT @ Robert.

Q -

How sure are you, that the shabu that you bought from ROBERT SALANGUIT @ Robert is genuine shabu?

A -

After I left the house of ROBERT SALANGUIT @ Robert, I proceeded back to our office and reported the progress of my mission to our Chief and presented to him the 2.12 grams of shabu I bought from the subject. Then afterwards, our Chief formally requested the Chief PNP Central Crime Laboratory Services, NPDC, for Technical Analysis which yielded positive result for shabu, a regulated drug as shown in the attached certification of PNP CLS result No. D-414-95 dated 19 Dec. 95.

Q -

Do you have anything more to add or retract from your statement?

A -

Yes, sir, I was offered by him (ROBERT SALANGUIT @ Robert) that anything I wish to buy bigger quantity of shabu, he is willing to transact to me on cash basis at his price of One Thousand Seven Hundred Fifty (P1,750.00) pesos per gram.

Q -

Are you willing to sign your statement freely and voluntarily?

A -

Yes, sir.[24]

However, the fact that there was no probable cause to support the application for the seizure of drug paraphernalia does not warrant the conclusion that the search warrant is void. This fact would be material only if drug paraphernalia was in fact seized by the police. The fact is that none was taken by virtue of the search warrant issued. If at all, therefore, the search warrant is void only insofar as it authorized the seizure of drug paraphernalia, but it is valid as to the seizure of methamphetamine hydrochloride as to which evidence was presented showing probable cause as to its existence. Thus, in *Aday v. Superior Court*,^[25] the warrant properly described two obscene books but improperly described other articles. It was held:

Although the warrant was defective in the respects noted, it does not follow that it was invalid as a whole. Such a conclusion would mean that the seizure of certain articles, even though proper if viewed separately, must be condemned merely because the warrant was defective with respect to other articles. The invalid portions of the warrant are severable from the authorization relating to the named books, which formed the principal basis of the charge of obscenity. The search for and seizure of these books, if otherwise valid, were not rendered illegal by the defects concerning other articles. . . . In so holding we do not mean to suggest that invalid portions of a warrant will be treated as severable under all circumstances. We recognize the danger that warrants might be obtained which are essentially general in character but as to minor items meet the requirement of particularity, and that wholesale seizures might be made under them, in the expectation that the seizure would in any event be upheld as to the property specified. Such an abuse of the warrant procedure, of course, could not be tolerated.

It would be a drastic remedy indeed if a warrant, which was issued on probable cause and particularly describing the items to be seized on the basis thereof, is to be invalidated in toto because the judge erred in authorizing a search for other items not supported by the evidence.^[26] Accordingly, we hold that the first part of the search warrant, authorizing the search of accused-appellant's house for an undetermined quantity of shabu, is valid, even though the second part, with respect to the search for drug paraphernalia, is not.

Specificity of the Offense Charged

Accused-appellant contends that the warrant was issued for more than one specific offense because possession or use of methamphetamine hydrochloride and possession of drug paraphernalia are punished under two different

provisions of R.A. No. 6425.[27] It will suffice to quote what this Court said in a similar case to dispose of this contention:

While it is true that the caption of the search warrant states that it is in connection with "Violation of R.A. 6425, otherwise known as the Dangerous Drugs Act of 1972," it is clearly recited in the text thereof that "There is probable cause to believe that Adolfo Olaes alias 'Debie' and alias 'Baby' of No. 628 Comia St., Filtration, Sta. Rita, Olongapo City, has in their session and control and custody of marijuana dried stalks/leaves/seeds/cigarettes and other regulated/prohibited and exempt narcotics preparations which is the subject of the offense stated above." Although the specific section of the Dangerous Drugs Act is not pinpointed, there is no question at all of the specific offense alleged to have been committed as a basis for the finding of probable cause. The search warrant also satisfies the requirement in the Bill of Rights of the particularity of the description to be made of the "place to be searched and the persons or things to be seized." [28]

Indeed, in *People v. Dichoso* [29] the search warrant was also for "Violation of R.A. 6425," without specifying what provisions of the law were violated, and it authorized the search and seizure of "dried marijuana leaves and methamphetamine hydrochloride (shabu) and sets of paraphernalias (sic)." This Court, however, upheld the validity of the warrant:

Appellant's contention that the search warrant in question was issued for more than (1) offense, hence, in violation of Section 3, Rule 126 of the Rules of Court, is unpersuasive. He engages in semantic juggling by suggesting that since illegal possession of shabu, illegal possession of marijuana and illegal possession of paraphernalia are covered by different articles and sections of the Dangerous Drugs Act of 1972, the search warrant is clearly for more than one (1) specific offense. In short, following this theory, there should have been three (3) separate search warrants, one for illegal possession of shabu, the second for illegal possession of marijuana and the third for illegal possession of paraphernalia. This argument is pedantic. The Dangerous Drugs Act of 1972 is a special law that deals specifically with dangerous drugs which are subsumed into "prohibited" and "regulated" drugs and defines and penalizes categories of offenses which are closely related or which belong to the same class or species. Accordingly, one (1) search warrant may thus be validly issued for the said violations of the Dangerous Drugs Act. [30]

Similarly, in another case, [31] the search warrant was captioned: "For Violation of P.D. No. 1866 (Illegal Possession of Firearms, etc.)." The validity of the warrant was questioned on the ground that it was issued without reference to any particular provision in P.D. No. 1866, which punished several offenses. We held, however, that while illegal possession of firearms is penalized under §1 of P.D. No. 1866 and illegal possession of explosives is penalized under §3 thereof, the decree is a codification of the various laws on illegal possession of firearms, ammunitions, and explosives which offenses are so related as to be subsumed within the category of illegal possession of firearms, etc. under P.D. No. 1866. Thus, only one warrant was necessary to cover the violations under the various provisions of the said law.

Particularity of the Place

Accused-appellant contends that the search warrant failed to indicate the place to be searched with sufficient particularity.

This contention is without merit. As the Solicitor General states:

. . . While the address stated in the warrant is merely "Binhagan St., San Jose, Quezon City," the trial court took note of the fact that the records of Search Warrant Case No. 160 contained several documents which identified the premises to be searched, to wit: 1) the application for search warrant which stated that the premises to be searched was located in between No. 7 and 11 at Binhagan Street, San Jose, Quezon City; 2) the deposition of witness which described the premises as "a house without a number located at Binhagan St., San

Jose, Quezon City; and 3) the pencil sketch of the location of the premises to be searched. In fact, the police officers who raided appellant's house under the leadership of Police Senior Inspector Rodolfo Aguilar could not have been mistaken as Inspector Aguilar resides in the same neighborhood in Binhagan where appellant lives and in fact Aguilar's place is at the end of appellant's place in Binhagan. Moreover, the house raided by Aguilar's team is undeniably appellant's house and it was really appellant who was the target. The raiding team even first ascertained through their informant that appellant was inside his residence before they actually started their operation.[32]

The rule is that a description of the place to be searched is sufficient if the officer with the warrant can, with reasonable effort, ascertain and identify the place intended to be searched.[33] For example, a search warrant authorized a search of Apartment Number 3 of a building at 83 Pleasant Street, Malborough, Massachusetts. As it turned out, there were five apartments in the basement and six apartments on both the ground and top floors and that there was an Apartment Number 3 on each floor. However, the description was made determinate by a reference to the affidavit supporting the warrant that the apartment was occupied by the accused "Morris Ferrante of 83 Pleasant Street, Malboro Mass." [34] In this case, the location of accused-appellant's house being indicated by the evidence on record, there can be no doubt that the warrant described the place to be searched with sufficient particularity.

In sum, we hold that with respect to the seizure of shabu from accused-appellant's residence, Search Warrant No. 160 was properly issued, such warrant being founded on probable cause personally determined by the judge under oath or affirmation of the deposing witness and particularly describing the place to be searched and the things to be seized.

Second. The search warrant authorized the seizure of methamphetamine hydrochloride or shabu but not marijuana. However, seizure of the latter drug is being justified on the ground that the drug was seized within the "plain view" of the searching party. This is contested by accused-appellant.

Under the "plain view doctrine," unlawful objects within the "plain view" of an officer who has the right to be in the position to have that view are subject to seizure and may be presented in evidence.[35] For this doctrine to apply, there must be: (a) prior justification; (b) inadvertent discovery of the evidence; and (c) immediate apparent illegality of the evidence before the police.[36] The question is whether these requisites were complied with by the authorities in seizing the marijuana in this case.

Prior Justification and Discovery by Inadvertence

Because the location of the shabu was indicated in the warrant and thus known to the police operatives, it is reasonable to assume that the police found the packets of the shabu first. Once the valid portion of the search warrant has been executed, the "plain view doctrine" can no longer provide any basis for admitting the other items subsequently found. As has been explained:

What the 'plain view' cases have in common is that the police officer in each of them had a prior justification for an intrusion in the course of which he came inadvertently across a piece of evidence incriminating the accused. The doctrine serves to supplement the prior justification ^¾ whether it be a warrant for another object, hot pursuit, search incident to lawful arrest, or some other legitimate reason for being present unconnected with a search directed against the accused ^¾ and permits the warrantless seizure. Of course, the extension of the original justification is legitimate only where it is immediately apparent to the police that they have evidence before them; the 'plain view' doctrine may not be used to extend a general exploratory search from one object to another until something incriminating at last emerges.[37]

The only other possible justification for an intrusion by the police is the conduct of a search pursuant to accused-appellant's lawful arrest for possession of shabu. However, a search incident to a lawful arrest is limited

to the person of the one arrested and the premises within his immediate control.[38] The rationale for permitting such a search is to prevent the person arrested from obtaining a weapon to commit violence, or to reach for incriminatory evidence and destroy it.

The police failed to allege in this case the time when the marijuana was found, i.e., whether prior to, or contemporaneous with, the shabu subject of the warrant, or whether it was recovered on accused-appellant's person or in an area within his immediate control. Its recovery, therefore, presumably during the search conducted after the shabu had been recovered from the cabinet, as attested to by SPO1 Badua in his depostion, was invalid.

[Apparent Illegality of the Evidence]

The marijuana bricks were wrapped in newsprint. There was no apparent illegality to justify their seizure. This case is similar to *People. v. Musa*[39] in which we declared inadmissible the marijuana recovered by NARCOM agents because the said drugs were contained in a plastic bag which gave no indication of its contents. We explained:

Moreover, when the NARCOM agents saw the plastic bag hanging in one corner of the kitchen, they had no clue as to its contents. They had to ask the appellant what the bag contained. When the appellant refused to respond, they opened it and found the marijuana. Unlike *Ker v. California*, where the marijuana was visible to the police officer's eyes, the NARCOM agents in this case could not have discovered the inculpatory nature of the contents of the bag had they not forcibly opened it. Even assuming then, that the NARCOM agents inadvertently came across the plastic bag because it was within their "plain view," what may be said to be the object in their "plain view" was just the plastic bag and not the marijuana. The incriminating nature of the contents of the plastic bag was not immediately apparent from the "plain view" of said object. It cannot be claimed that the plastic bag clearly betrayed its contents, whether by its distinctive configuration, is transparency, or otherwise, that its contents are obvious to an observer.[40]

No presumption of regularity may be invoked by an officer in aid of the process when he undertakes to justify an encroachment of rights secured by the Constitution.[41] In this case, the marijuana allegedly found in the possession of accused-appellant was in the form of two bricks wrapped in newsprint. Not being in a transparent container, the contents wrapped in newsprint could not have been readily discernible as marijuana. Nor was there mention of the time or manner these items were discovered. Accordingly, for failure of the prosecution to prove that the seizure of the marijuana without a warrant was conducted in accordance with the "plain view doctrine," we hold that the marijuana is inadmissible in evidence against accused-appellant. However, the confiscation of the drug must be upheld.

Third. Accused-appellant claims that undue and unnecessary force was employed by the searching party in effecting the raid.

Rule 126, §7 of the Revised Rules on Criminal Procedure[42] provides:

Right to break door or window to effect search. $\frac{3}{4}$ The officer, if refused admittance to the place of directed search after giving notice of his purpose and authority, may break open any outer or inner door or window of a house or any part of a house or anything therein to execute the warrant or liberate himself or any person lawfully aiding him when unlawfully detained therein.

Accused-appellant's claim that the policemen had clambered up the roof of his house to gain entry and had broken doors and windows in the process is unsupported by reliable and competent proof. No affidavit or sworn statement of disinterested persons, like the barangay officials or neighbors, has been presented by accused-appellant to attest to the truth of his claim.

In contrast, Aguilar and Duano's claim that they had to use some force in order to gain entry cannot be doubted.

The occupants of the house, especially accused-appellant, refused to open the door despite the fact that the searching party knocked on the door several times. Furthermore, the agents saw the suspicious movements of the people inside the house. These circumstances justified the searching party's forcible entry into the house, founded as it is on the apprehension that the execution of their mission would be frustrated unless they do so.

WHEREFORE, in Criminal Case No. Q-95-64357, the decision of the Regional Trial Court, Branch 96, Quezon City, finding accused-appellant Roberto Salangit y Ko guilty of possession of illegal drugs under §16 of R.A. No. 6425, otherwise known as the Dangerous Drugs Act, as amended, and sentencing him to suffer a prison term ranging from six (6) months of arresto mayor, as minimum, and four (4) years and two (2) months of prison correccional, as maximum, and ordering the confiscation of 11.14 grams of methamphetamine hydrochloride is **AFFIRMED**.

In Criminal Case No. Q-95-64358, the decision of the same court finding accused-appellant Roberto Salangit y Ko guilty of possession of prohibited drugs under §8 of R.A. No. 6425, as amended, and sentencing him to suffer the penalty of reclusion perpetua and to pay a fine of P700,000.00 is hereby **REVERSED** and **SET ASIDE** and accused-appellant is **ACQUITTED** of the crime charged. However, the confiscation of the 1,254 grams of marijuana, as well as the 11.14 grams of methamphetamine hydrochloride, and its disposition as ordered by the trial court is **AFFIRMED**.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

[1] Per Judge Lucas P. Bersamin.

[2] Rollo, p. 13.

[3] Id., p. 14.

[4] RTC Records (Criminal Case No. Q-95-64358), p. 50.

[5] RTC Records for Search Warrant No. 160, "A," p. 4.

[6] TSN, p. 4, Oct. 29, 1996.

[7] Id., pp. 5-6.

[8] Id., p. 6.

[9] TSN, p. 22, June 9, 1997.

[10] Id., p. 7.

[11] RTC Records (Crim. Case No. Q-95-64358), p. 10.

[12] TSN, June 9, 1997, p. 8.

[13] Id., p. 9.

[14] Decision, p.3; Rollo, p. 24.

[15] TSN, pp. 1-4, Nov. 24, 1997.

[16] Id., pp. 5-6.

[17] Id., p. 9.

[18] Id.

[19] TSN, Oct. 6, 1997.

[20] Rollo, pp. 40-41.

[21] Formerly Rule 126, §3 of the 1985 Rules on Criminal Procedure.

[22] Nolasco v. Paño, 139 SCRA 152 (1985) citing Mata v. Bayona, 128 SCRA 388 (1984).

[23] Rollo, p. 29.

[24] RTC Records for Proceedings of Search Warrant No. 160, p. 5.

[25] 55 Cal.2d 789, 13 Cal.Rptr. 415, 362 P.2d 47 (1961) cited in WAYNE R. LAFAVE, SEARCH AND SEIZURE, A TREATISE ON THE FOURTH AMENDMENT 258 (2d ed. 1987).

[26] LAFAVE, supra at 28.

[27] SEC. 8, Possession or Use of Prohibited Drugs. - The penalty of reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall possess or use any prohibited drug subject to the provisions of Section 20 hereof.

SEC. 16. Possession or Use of Regulated Drugs. - The penalty of reclusion perpetua to death and fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who shall possess or use any regulated drug without the corresponding license or prescription, subject to the provisions of section 20 hereof. (As amended by Sec. 16, RA No. 7659).

[28] Olaes v. People, 155 SCRA 486, 490-491 (1987).

[29] 223 SCRA 174 (1993).

[30] Id., pp. 184-185.

[31] Prudente v. Dayrit, 180 SCRA 69 (1989).

[32] Appellee's Brief, pp. 8-9; Rollo, pp. 140-141.

[33] Prudente v. Dayrit, supra.

[34] Commonwealth v. Todisco, Mass., 294 N.E. 2d 860 (1973).

[35] People v. Musa, 217 SCRA 597 (1993) citing Harris v. United States, 390 U.S. 234, 19 L.Ed. 2d 1067 (1968).

[36] People v. Musa, supra citing Coolidge v. New Hampshire, 403 U.S. 433, 29 L. Ed. 2d 564 (1971).

[37] Coolidge v. New Hampshire, supra.

[38] People v. Musa, supra, citing Robbins v. California, 453 U.S. 420, 69 L. Ed. 2d 744 (1981).

[39] Supra.

[40] Id., p. 612.

[41] Nolasco v. Paño, supra.

[42] Formerly Rule 126, §6 of the 1985 Rules on Criminal Procedure.

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