

## SECOND DIVISION

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

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

### D E C I S I O N

**MENDOZA, J.:**

This is an appeal from the decision,<sup>[1]</sup> 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.<sup>[2]</sup>

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.<sup>[3]</sup>

When arraigned on May 21, 1996, accused-appellant pleaded not guilty,<sup>[4]</sup> 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<sup>[5]</sup> 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.<sup>[6]</sup>

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.<sup>[7]</sup>

After showing the search warrant to the occupants of the house, Lt. Cortes and his group started searching the house.<sup>[8]</sup> 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<sup>[9]</sup> having a total weight of approximately 1,255 grams.<sup>[10]</sup> A receipt of the items seized was prepared, but the accused-appellant refused to sign it.<sup>[11]</sup>

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.<sup>[12]</sup>

PO3 Duazo requested a laboratory examination of the confiscated evidence.<sup>[13]</sup> 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.<sup>[14]</sup>

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.<sup>[15]</sup>

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.<sup>[16]</sup>

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.<sup>[17]</sup>

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.<sup>[18]</sup>

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.<sup>[19]</sup>

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.<sup>[20]</sup>

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<sup>[21]</sup> 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.<sup>[22]</sup> 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.<sup>[23]</sup>

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?