



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

ONGCOMA HADJI HOMAR,
Petitioner,

G.R. No. 182534

Present:

CARPIO, J., *Chairperson*,
BRION,
DEL CASTILLO,
MENDOZA, and
LEONEN, JJ.

- versus -

Promulgated:

PEOPLE OF THE PHILIPPINES,
Respondent.

02 SEP 2015

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DECISION

BRION, J.:

Before the Court is a petition for review on *certiorari* filed by Ongcoma Hadji Homar (*petitioner*) seeking the reversal of the Decision¹ of the Court of Appeals (*CA*) dated January 10, 2008, and its Resolution dated April 11, 2008 in CA-G.R. CR No. 29364. These assailed CA rulings affirmed the decision of the Regional Trial Court (*RTC*) of Parañaque City, Branch 259 in Criminal Case No. 02-0986 which convicted the petitioner for violation of Republic Act (*RA*) No. 9165 entitled "An Act Instituting the Comprehensive Dangerous Drugs Act of 2002."

The Factual Antecedents

The petitioner was charged for violation of Section 11, Article II² of RA 9165. The Information states that on or about August 20, 2002, the

¹ Penned by Associate Justice Arturo G. Tayag and concurred in by Associate Justice Rodrigo V. Cosico and Hakim S. Abdulwahid, *rollo*, pp. 45-63.

² Article II – Unlawful Acts and Penalties: Section 11. *Possession of Dangerous Drugs*. – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:
(1) 10 grams or more of opium;

petitioner was found to possess one heat-sealed transparent plastic sachet containing 0.03 grams of methylamphetamine hydrochloride, otherwise known as *shabu*. The petitioner pleaded not guilty during arraignment.³

PO1 Eric Tan (*Tan*) was the lone witness for the prosecution. As stated in the RTC decision, he testified that on August 20, 2002, at around 8:50 in the evening, their Chief, P/Chief Supt. Alfredo C. Valdez, ordered him and civilian agent (C/A) Ronald Tangcoy (*Tangcoy*) to go to the South Wing, Roxas Boulevard. While proceeding to the area onboard a mobile hunter, they saw the petitioner crossing a “No Jaywalking” portion of Roxas Boulevard. They immediately accosted him and told him to cross at the pedestrian crossing area.

The petitioner picked up something from the ground, prompting Tangcoy to frisk him resulting in the recovery of a knife. Thereafter, Tangcoy conducted a thorough search on the petitioner’s body and found and confiscated a plastic sachet containing what he suspected as *shabu*. Tangcoy and Tan executed a *sinumpaang salaysay* on the incident.⁴

The petitioner was the sole witness for the defense.⁵ He testified that on August 20, 2002, he was going home at around 6:30 p.m. after selling imitation sunglasses and other accessories at the BERMA Shopping Center. After crossing the overpass, a policeman and a civilian stopped and frisked him despite his refusal. They poked a gun at him, accused him of being a *holdupper*, and forced him to go with them. They also confiscated the kitchen knife, which he carried to cut cords. He was likewise investigated

(2) 10 grams or more of morphine;(3) 10 grams or more of heroin;(4) 10 grams or more of cocaine or cocaine hydrochloride;(5) 50 grams or more of methamphetamine hydrochloride or “shabu”;(6) 10 grams or more of marijuana resin or marijuana resin oil;(7) 500 grams or more of marijuana; and(8) 10 grams or more of other dangerous drugs such as, but not limited to, methylenedioxyamphetamine (MDA) or “ecstasy”, paramethoxyamphetamine (PMA), trimethoxyamphetamine (TMA), lysergic acid diethylamine (LSD), gamma hydroxyamphetamine (GHB), and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value, or if the quantity possessed is far beyond therapeutic requirements, as determined and promulgated by the Board in accordance with Section 93, Article XI of this Act.

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:(1) Life imprisonment and a fine ranging from Four hundred thousand pesos (₱400,000.00) to Five hundred thousand pesos (₱500,000.00), if the quantity of methamphetamine hydrochloride or “shabu” is ten (10) grams or more but less than fifty (50) grams;(2) Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four hundred thousand pesos (₱400,000.00) to Five hundred thousand pesos (₱500,000.00), if the quantities of dangerous drugs are five (5) grams or more but less than ten (10) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or “shabu”, or other dangerous drugs such as, but not limited to, MDMA or “ecstasy”, PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or three hundred (300) grams or more but less than five (hundred) 500) grams of marijuana; and(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or “shabu”, or other dangerous drugs such as, but not limited to, MDMA or “ecstasy”, PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

³ *Rollo*, p. 46.

⁴ *Id.* at 24, 49.

⁵ *Id.* at 50.

for alleged possession of *shabu* and detained for one day. He was criminally charged before the Metropolitan Trial Court of Parañaque City, Branch 77 for the possession of the kitchen knife but he was eventually acquitted.⁶

The RTC's Ruling

The RTC convicted the petitioner. It ruled that PO1 Tan and C/A Tangcoy were presumed to have performed their duties regularly in arresting and conducting a search on the petitioner. The RTC also noted that PO1 Eric Tan was straightforward in giving his testimony and he did not show any ill motive in arresting the petitioner.⁷

The RTC also did not believe the petitioner's defense of denial and ruled that it is a common and standard defense ploy in most prosecutions in dangerous drugs cases. This defense is weak especially when it is not substantiated by clear and convincing evidence as in this case.⁸

The petitioner filed an appeal with the CA.

The CA's ruling

The CA dismissed the petition and affirmed the RTC's findings.

According to the CA, Section 5, paragraph (a) of Rule 113 of the Revised Rules of Criminal Procedure enumerates the circumstances when a warrantless arrest is legal, valid, and proper. One of these is when the person to be arrested has committed, is actually committing, or is attempting to commit an offense in the presence of a peace officer or a private person. In the present case, the petitioner committed jaywalking in the presence of PO1 Tan and C/A Tangcoy; hence, his warrantless arrest for jaywalking was lawful.⁹

Consequently, the subsequent frisking and search done on the petitioner's body which produced the knife and the *shabu* were incident to a lawful arrest allowed under Section 13, Rule 126 of the Revised Rules of Criminal Procedure.¹⁰

The CA likewise ruled that PO1 Tan¹¹ clearly showed that the petitioner was caught *in flagrante delicto* in possession of *shabu*.¹²

The petitioner filed a motion for reconsideration which was denied by the CA.¹³ Hence, this appeal.

⁶ Id. at 50-51.

⁷ Id. at 52.

⁸ Id.

⁹ Id. at 59.

¹⁰ Id.

¹¹ Based on the transcript of stenographic notes (TSN) taken during the hearing on April 21, 2003. Id. at 56-57.

¹² Id. at 58.

¹³ Id. at 73-74.

The Petitioner's Position

The petitioner argues that the CA erred in affirming his conviction on the following grounds:

First, the *shabu*, which was allegedly recovered from the petitioner, is inadmissible as evidence because it was obtained as a result of his unlawful arrest and in violation of his right against unreasonable search and seizure. The petitioner has not committed, was not committing and was not attempting to commit any crime at the time of his arrest. In fact, no report or criminal charge was filed against him for the alleged jaywalking.¹⁴

Second, assuming for the sake of argument that there was a valid arrest, Section 13, Rule 126 of the Revised Rules of Criminal Procedure permits a search that is directed only upon dangerous weapons or “anything which may have been used or constitute proof in the commission of an offense without a warrant.” In the present case, the offense, for which the petitioner was allegedly caught in *flagrante delicto*, is jaywalking. The alleged confiscated drug has nothing to do with the offense of jaywalking.¹⁵

Finally, the non-presentation of Tangcoy, who allegedly recovered the *shabu* from the petitioner, renders the prosecution's evidence weak and uncorroborated. Consequently, the sole testimony of Tan cannot sustain the petitioner's conviction beyond reasonable doubt.

The Respondent's Position

In his Comment, the respondent argues that the guilt of the petitioner was conclusively established beyond reasonable doubt.¹⁶ He reiterates that the warrantless frisking and search on the petitioner's body was an incident to a lawful warrantless arrest for jaywalking.¹⁷ The non-filing of a criminal charge of jaywalking against the petitioner does not render his arrest invalid.¹⁸

The respondent also assails the petitioner's defense that the *shabu* is inadmissible as evidence. According to the respondent, the petitioner can no longer question his arrest after voluntarily submitting himself to the jurisdiction of the trial court when he entered his plea of not guilty and when he testified in court.¹⁹

The Court's Ruling

We find the petition meritorious.

¹⁴ Id. at 17.

¹⁵ Id. at 122.

¹⁶ Id. at 96.

¹⁷ Id. at 99-100.

¹⁸ Id. at 101.

¹⁹ Id. at 103-104.

The prosecution failed to prove that a lawful warrantless arrest preceded the search conducted on the petitioner's body.

The Constitution guarantees the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures. Any evidence obtained in violation of these rights shall be inadmissible for any purpose in any proceeding. While the power to search and seize may at times be necessary to the public welfare, the exercise of this power and the implementation of the law should not violate the constitutional rights of the citizens.²⁰

To determine the admissibility of the seized drugs in evidence, it is indispensable to ascertain whether or not the search which yielded the alleged contraband was lawful.²¹ There must be a valid warrantless search and seizure pursuant to an equally valid warrantless arrest, which must precede the search. For this purpose, the law requires that there be first a lawful arrest before a search can be made — the process cannot be reversed.²²

Section 5, Rule 113²³ of the Revised Rules of Criminal Procedure provides the **only** occasions when a person may be lawfully arrested without a warrant. In the present case, the respondent alleged that the petitioner's warrantless arrest was due to his commission of jaywalking *in flagrante delicto* and in the presence of Tan and Tangcoy.

To constitute a valid *in flagrante delicto* arrest, two requisites must concur: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a **crime**; and (2) such overt act is done in the presence of or within the view of the arresting officer.²⁴

The prosecution has the burden to prove the legality of the warrantless arrest from which the *corpus delicti* of the crime - *shabu*- was obtained. For, without a valid warrantless arrest, the alleged confiscation of the *shabu* resulting from a warrantless search on the petitioner's body is surely a violation of his constitutional right against unlawful search and seizure. As

²⁰ 563 Phil. 934, 941 (2007).

²¹ Id.

²² *People v. Delos Reyes, et al.*, G.R. No. 174774, August 31, 2011, 656 SCRA 417, 450.

²³ Section 5. Arrest without warrant; when lawful.—A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

²⁴ *Supra* note 22, at 452.

a consequence, the alleged *shabu* shall be inadmissible as evidence against him.

On this point, we find that aside from the bare testimony of Tan as quoted by the CA in its decision, the prosecution did not proffer any other proof to establish that the requirements for a valid *in flagrante delicto* arrest were complied with. Particularly, the prosecution failed to prove that the petitioner was **committing a crime**.

The respondent failed to specifically identify the area where the petitioner allegedly crossed. Thus, Tan merely stated that the petitioner “crossed the street of Roxas Boulevard, in a place not designated for crossing.” Aside from this conclusion, the respondent failed to prove that the portion of Roxas Boulevard where the petitioner crossed was indeed a “no jaywalking” area. The petitioner was also not charged of jaywalking. These are pieces of evidence that could have supported the conclusion that indeed the petitioner was committing a crime of jaywalking and therefore, the subsequent arrest and search on his person was valid. Unfortunately, the prosecution failed to prove this in the present case.

We clarify, however, that the filing of a criminal charge is not a condition precedent to prove a valid warrantless arrest. Even if there is a criminal charge against an accused, the prosecution is not relieved from its burden to prove that there was indeed a valid warrantless arrest preceding the warrantless search that produced the *corpus delicti* of the crime.

Neither can the presumption of regularity in the performance of official duty save the prosecution’s lack of evidence to prove the warrantless arrest and search. This presumption cannot overcome the presumption of innocence or constitute proof of guilt beyond reasonable doubt. Among the constitutional rights enjoyed by an accused, the most primordial yet often disregarded is the presumption of innocence. This elementary principle accords every accused the right to be presumed innocent until the contrary is proven beyond reasonable doubt; and the burden of proving the guilt of the accused rests upon the prosecution.²⁵

It may not be amiss to point out also the contrary observation of the Court as regards the findings of the RTC when it held, rather hastily, that in the process of accosting the petitioner for jaywalking, Tangcoy recovered from his possession a knife and a small plastic sachet containing *shabu*.²⁶ The testimony of Tan, as quoted in the CA decision, and the findings of the RTC, cast doubt on whether Tan and Tangcoy **intended to arrest** the petitioner for jaywalking.

Arrest is the taking of a person into custody in order that he or she may be bound to answer for the commission of an offense. It is effected by an actual restraint of the person to be arrested or by that person’s voluntary

²⁵ *Supra* note 20, at 954.

²⁶ *Rollo*, p. 43.

submission to the custody of the one making the arrest. Neither the application of actual force, manual touching of the body, or physical restraint, nor a formal declaration of arrest, is required. **It is enough that there be an intention on the part of one of the parties to arrest the other, and that there be an intent on the part of the other to submit, under the belief and impression that submission is necessary.**²⁷

The pertinent testimony²⁸ of Tan, as quoted by the CA, is as follows:

Q: What happened after you obeyed the order of your immediate superior?

A: At 8:50 in the evening of August 20, 2002, we saw a male person crossed the street of Roxas Boulevard, in a place not designated for crossing.

Q: What did you do when you saw this person crossed the street of Roxas Boulevard, in a place not designated for crossing?

A: **We accosted him.**

Q: **How did you accost that person?**

A: **We accosted him and pointed to him the right place for crossing. Pero napansin namin siya na parang may kinukuha, so he was frisked by Ronald Tangcoy and a knife was recovered from his possession.**

Q: After a knife was recovered by your companions (sic) from that person who allegedly crossed the wrong side of the street, what happened after that?

A: After recovering the knife, nakaalalay lang ako and **he was frisked again by Tangcoy** and a plastic sachet was recovered from his possession.

Q: Did you know the contents of that plastic sachet which your companion recovered from that person who crossed the wrong side of the street?

A: Yes, sir.

Q: What about the contents?

A: Suspected shabu or methylamphetamine hydrochloride.

Q: **After the drug was recovered from the possession of that man, what did you do?**

A: **We brought him to our precinct and informed him of his constitutional rights and brought him to the Parañaque Community Hospital and the suspected shabu or**

²⁷ *Luz v. People of the Philippines*, G.R. No. 197788, February 29, 2012, 667 SCRA 421, 429.

²⁸ *Rollo*, pp. 56-58.

methylamphetamine was brought to the PNP Crime Lab at Fort Bonifacio.

Q: Did you come to know the name of that person whom you arrested in the morning of August 20, 2002?

A: Yes, sir.

Q: What is his name?

A: Ongcoma Hadji Omar, sir.

Q: Is he the same Ongcoma Hadji Omar y Para, the accused in this case?

A: Yes, sir.”
[emphasis and underscoring supplied]

Clearly, no arrest preceded the search on the person of the petitioner. When Tan and Tangcoy allegedly saw the petitioner jaywalking, they did not arrest him but accosted him and pointed to him the right place for crossing. In fact, according to the RTC, Tan and Tangcoy **“immediately accosted him and told him to cross [at] the designated area.”**²⁹

Tan and Tangcoy did not intend to bring the petitioner under custody or to restrain his liberty. This lack of intent to arrest him was bolstered by the fact that there was no criminal charge that was filed against the petitioner for crossing a “no jaywalking” area.

From Tan’s testimony, the intent to arrest the petitioner only came after they allegedly confiscated the *shabu* from the petitioner, for which they informed him of his constitutional rights and brought him to the police station.

The indispensability of the intent to arrest an accused in a warrantless search incident to a lawful arrest was emphasized in *Luz vs. People of the Philippines*.³⁰ The Court held that the *shabu* confiscated from the accused in that case was inadmissible as evidence when the police officer who flagged him for traffic violation **had no intent to arrest** him. According to the Court, due to the lack of intent to arrest, the subsequent search was unlawful. **This is notwithstanding the fact that the accused, being caught *in flagrante delicto* for violating an ordinance, could have been therefore lawfully stopped or arrested by the apprehending officers.**

In the light of the discussion above, the respondent’s argument that there was a lawful search incident to a lawful warrantless arrest for jaywalking appears to be an afterthought in order to justify a warrantless search conducted on the person of the petitioner. In fact, the illegality of the search for the *shabu* is further highlighted when it was not recovered immediately after the alleged lawful arrest, if there was any, but only after the initial search resulted in the recovery of the knife. Thereafter, according

²⁹ Id. at 42.

³⁰ *Supra* note 27, at 430.

to Tan, Tangcoy conducted **another search** on the person of the petitioner resulting in the alleged confiscation of the *shabu*. Clearly, the petitioner's right to be secure in his person was callously brushed aside twice by the arresting police officers.³¹

The waiver of an illegal warrantless arrest does not also mean a waiver of the inadmissibility of evidence seized during an illegal warrantless arrest.

We agree with the respondent that the petitioner did not timely object to the irregularity of his arrest before his arraignment as required by the Rules. In addition, he actively participated in the trial of the case. As a result, the petitioner is deemed to have submitted to the jurisdiction of the trial court, thereby curing any defect in his arrest.

However, this waiver to question an illegal arrest only affects the jurisdiction of the court over his person. It is well-settled that a waiver of an illegal, warrantless arrest does not carry with it a waiver of the inadmissibility of evidence seized during an illegal warrantless arrest.³²

Since the *shabu* was seized during an illegal arrest, its inadmissibility as evidence precludes conviction and justifies the acquittal of the petitioner.

WHEREFORE, we **GRANT** the petition and **REVERSE** and **SET ASIDE** the Decision of the Court of Appeals dated January 10, 2008, and its Resolution dated April 11, 2008 in CA-G.R. CR No. 29364. Petitioner **ONGCOMA HADJI HOMAR** is **ACQUITTED** and ordered immediately **RELEASED** from detention, unless he is confined for any other lawful cause.

SO ORDERED.



ARTURO D. BRION

Associate Justice

WE CONCUR:



ANTONIO T. CARPIO

Associate Justice

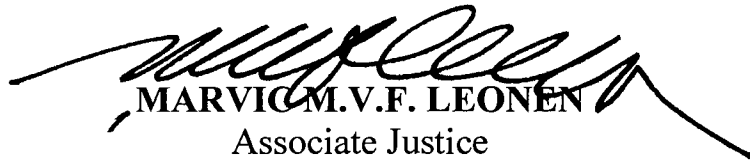
Chairperson

³¹ *Rollo*, p. 56.

³² 640 Phil. 669, 681 (2010).

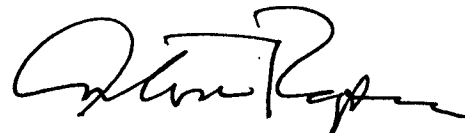

MARIANO C. DEL CASTILLO
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice


MARVIC M. V. F. LEONEN
Associate Justice


ATTESTATION

I attest 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.


ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

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.


MARIA LOURDES P. A. SERENO
Chief Justice