Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

- *versus* -

RONILO JUMARANG *y* MULINGBAYAN,
Accused-Appellant.

G.R. No. 250306

Present:

LEONEN, *J., Chairperson,*
LAZARO-JAVIER,
*LOPEZ, M.,
LOPEZ, J., and
KHO, JR., *JJ.*

Promulgated:
AUG 10 2022

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DECISION

LOPEZ, J., *J.*:

This Court resolves an appeal from the Decision[1] dated January 16, 2018 of the Court of Appeals (*CA*), in CA-G.R. CR HC-No. 08654, which affirmed with modification the Judgment[2] dated August 30, 2016 rendered by the Regional Trial Court of Iriga City, Branch 60 (*RTC*), in Criminal Case No. Ir-9174. The RTC earlier found accused-appellant Ronilo Jumarang *y* Mulingbayan (*Jumarang*) guilty beyond reasonable doubt of violation of Section 16 (Cultivation or Culture of Plants Classified as Dangerous Drugs or are Sources Thereof), Article II of Republic Act (*R.A.*) No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

On April 27, 2010, an Information was filed against Jumarang, the accusatory portion of which reads:

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* On official leave.

[1] Penned by Associate Justice Priscilla J. Baltazar-Padilla (now a former member of this Court), with Associate Justices Nina G. Antonio-Valenzuela and Pedro B. Corales, concurring; *rollo*, pp. 3-16.

[2] Penned by Judge Timoteo A. Panga, Jr.; CA *rollo*, pp. 55-61.

> That on [the] 11th day of April 2010 at about 11:15 o'clock [*sic*] in the morning at Barangay Santiago, Bato, Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without any legal purpose or authority, did then and there willfully, unlawfully and knowingly, PLANT, CULTIVATE OR CULTURE THREE (3) POTS OF FULLY GROWN MARIJUANA PLANTS WITH FRUITING TOPS, CLASSIFIED AS DANGEROUS DRUGS, ON TOP OF THE ROOF OF HIS HOUSE MADE OF CONCRETE SLAB, MIXED WITH OTHER ORNAMENTAL PLANTS, NOW HAVING THE FOLLOWING MARKINGS AND HEIGHTS: EXHB. A JPB 4-11-10=116 CM; EXHB B JPB 4-11-10=189 CM & EXHB C JPB 4-11-10=109 CM regardless of quantity, to the great damage and prejudice of public interest and of that of the Republic of the Philippines.
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> ACTS CONTRARY TO LAW.[3]

Jumarang was arraigned and pleaded not guilty to the charge against him.[4] Thereafter, trial on the merits ensued.

The prosecution witnesses testified[5] that on April 11, 2010, around 10:30 in the morning, Police Officer (*PO*) 2 Manuel Tanay[6] (*PO2 Tanay*) received a tip that someone "in the De Lima residence" located in Santiago, Bato, Camarines Sur was keeping *marijuana* plants. The information was relayed to the then Chief of Police of Bato, Camarines Sur Police Inspector Salvador Banaria (*P/Insp. Banaria*), who, in turn, directed PO2 Tanay and PO 2 Jeric Buena[7] (*PO2 Buena*) to conduct surveillance.[8]

PO2 Tanay and PO2 Buena immediately went to the area and positioned themselves around 10 meters outside a house, which was located inside a compound. From where they were standing, they could see a man, later on identified as Jumarang,[9] tending to some plants at the roof of the house. Not long after, the man, holding a three-foot tall potted plant with "five finger leaves," started descending the roof.

Suspecting that Jumarang was bringing the plant inside his house, the two police officers called out to him and rushed inside the compound. They instructed Jumarang to put the plant down so they could closely examine it. Jumarang complied while asserting that it was a medicinal plant. They also asked Jumarang if they could go inside the house. Jumarang relented and allowed PO2 Tanay and PO2 Buena inside the house.[10]

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3 *Rollo*, pp. 3-4.
4 *Id.* at 4.
5 CA *rollo*, pp. 56-59; 74-75.
6 Records, pp. 20-25.
7 *Id.* at 11-16.
8 CA *rollo*, pp. 56.
9 Records, pp. 26.
10 CA *rollo*, pp. 56.

When PO2 Tanay and PO2 Buena went up the roof, they found two other pots of what they identified as *marijuana* plants. They also brought these down. At this point, onlookers were already starting to gather, including the owner of the compound, so PO2 Tanay and PO2 Buena decided to bring Jumarang and the plants to the police station.[11]

Once there, PO2 Tanay looked for a barangay official, a member of the media, and a prosecutor. He was able to secure the attendance of Acting Punong Barangay Adam Billiones, media practitioner Glenda Bearis, and Prosecutor Antonio Ramos, Jr. as witnesses.[12] PO2 Buena also prepared the inventory receipts, and photographs were taken of the plants which were turned over to PO2 Rico Dancalan. The next day, the plants were brought to Camp Simeon Ola for scientific examination. The tests conducted by Police Senior Inspector Wilfredo I. Pabustan, Jr., a forensic chemist, confirmed that these were *marijuana* plants.[13]

For his part, Jumarang vehemently denied the charges against him.[14] He testified that at the time of the incident, he was visiting his in-laws from Batangas where he resides. He stated that on that day, April 11, 2010, his mother-in-law requested him to clean their rooftop. However, when he saw three pots of *marijuana* plants among the other plants, he decided to report the matter to the police. However, as he was handling the plants to bring to the police, two of them passed by him. When they saw him with the plant, they approached and told him that he was planting *marijuana*. They then asked him if they could check the rooftop and he accompanied them, along with his parents-in-law, his wife, and some neighbors. There, they saw two more *marijuana* plants. As Jumarang was the one caught handling the plant, he was arrested by the police officers.

After trial on the merits, the trial court rendered the Judgment[15] dated August 30, 2016 finding Jumarang guilty beyond reasonable doubt of violation of Section 16, Article II of R.A. No. 9165, and sentencing him to suffer the penalty of *reclusion perpetua* and to pay a fine of ₱500,000.00.

Jumarang appealed the Judgment dated August 30, 2016 to the CA. However, the same was denied by the CA in its Decision[16] dated January 16, 2018, which affirmed with modification the trial court's Judgment. The dispositive portion of the CA Decision reads:

> **WHEREFORE**, in view of all the foregoing, the appeal of accused-appellant is **DENIED** and the RTC's Decision dated August 30, 2016 is

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[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Rollo*, p. 6.
[15] CA *rollo*, pp. 55-61.
[16] *Rollo*, pp. 3-16.

> hereby **AFFIRMED** with **MODIFICATION** in that the penalty imposed is life imprisonment with payment of fine of five hundred thousand Pesos ([₱]500,000.00).
>
> **SO ORDERED.**[17]

Hence, the instant appeal.

Issues

I.

Whether the *marijuana* plants seized from accused-appellant is admissible in evidence to prove his guilt for the crime of violation of Section 16, Article II of R.A. No. 9165.

II.

Whether the prosecution was able to prove the guilt of accused-appellant beyond reasonable doubt for the crime of violation of Section 16, Article II of R.A. No. 9165.

Our Ruling

Pertinent to the resolution of this case is the determination of whether the three pots of *marijuana* plants seized from accused-appellant are admissible in evidence. Accused-appellant contends that the *marijuana* plants were seized from him through an invalid warrantless search. He asserts that there being no valid warrantless arrest, the subsequent warrantless search effected on him was likewise unlawful.

The Office of the Solicitor General, on the other hand, maintains that the *marijuana* plants seized from accused-appellant were products of a valid search incidental to a lawful warrantless arrest and valid consented search.

Section 2, Article III of the 1987 Constitution mandates that search and seizure must be carried out through or on the strength of a judicial warrant predicated upon the existence of probable cause, absent which, such search and seizure becomes "unreasonable" within the meaning of the said constitutional provision.[18]

To protect the people from unreasonable searches and seizures, Section 3 (2), Article III of the 1987 Constitution provides that evidence obtained from unreasonable searches and seizures shall be inadmissible in evidence for any

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[17] *Id.* at 16.

[18] *Remegio v. People*, 814 Phil. 1073 (2017).

purpose in any proceeding.[19] In other words, evidence obtained and confiscated on the occasion of such an unreasonable search and seizure is tainted and should be excluded for being the proverbial fruit of a poisonous tree.[20]

However, there are instances when a warrantless search is valid. The following are recognized instances of permissible warrantless searches: (1) a warrantless search incidental to a lawful arrest; (2) search of evidence in plain view; (3) search of a moving vehicle; (4) consented warrantless searches; (5) customs search; (6) stop and frisk; and (7) exigent and emergency circumstances.[21]

The CA ruled that accused-appellant was arrested *in flagrante delicto* because he was holding a pot planted with *marijuana* when the police officers saw him.

After a careful review of the evidence on record, the Court finds that the warrantless arrest was unlawful. Consequently, the search effected on accused-appellant was also unlawful.

In a search incidental to a lawful arrest, the law requires that there must first be a lawful arrest before a search can be made; the process cannot be reversed.[22] Under Section 5, Rule 113 of the Rules of Court, a warrantless arrest may be made under the following circumstances:

> Section 5. *Arrest without warrant; when lawful.* — A peace officer or a private person may, without a warrant, arrest a person:
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> **(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
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> (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 is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another. (Emphasis supplied)

In warrantless arrest made pursuant to Section 5(a), two elements must concur: (1) the person to be arrested must execute an overt act indicating that he has just committed, actually committing, or is attempting to commit a crime;

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[19] *Id.* at 1075.
[20] *Villamor v. People*, 807 Phil. 894, 903 (2017).
[21] *Veridiano v. People*, 810 Phil. 642, 656 (2017).
[22] *Vaporoso v. People*, G.R. No. 238659, June 3, 2019.

and (2) such overt act is done in the presence or within the view of the arresting officer.[23]

In an arrest made *in flagrante delicto*, it is required that the apprehending officer must have been spurred by probable cause to arrest a person caught. Probable cause refers to "such facts and circumstances which would lead a reasonably discreet and prudent [person] to believe that an offense has been committed by the person sought to be arrested."[24]

As explained in *People v. Racho*,[25] a lawful arrest must precede or at least must be substantially contemporaneous to the search made by a police officer provided there is probable cause to arrest the offender, thus:

> Recent jurisprudence holds that in searches incident to a lawful arrest, the arrest must precede the search; generally, the process cannot be reversed. Nevertheless, a search substantially contemporaneous with an arrest can precede the arrest if the police have probable cause to make the arrest at the outset of the search. Thus, given the factual milieu of the case, we have to determine whether the police officers had probable cause to arrest appellant. Although probable cause eludes exact and concrete definition, it ordinarily signifies a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man to believe that the person accused is guilty of the offense with which he is charged.[26]

The Court finds that accused-appellant's arrest could not be justified as an *in flagrante delicto* arrest under Rule 113, Section 5(a) of the Rules of Court.

In this case, PO2 Tanay testified that they received a tip from a confidential informant that *marijuana* plants could be found in the De Lima residence located in Santiago, Bato, Camarines Sur. To verify the tip, the police officers proceeded to the De Lima residence and conducted a surveillance where they observed the house from the roadside. According to PO2 Tanay, they were positioned at a distance of ten meters from the house when they saw a man going downstairs holding a potted plant. According to PO2 Tanay, since their confidential informant already told them that the person had some *marijuana* plants, they already assumed that the potted plant was *marijuana*. Thus, they called the man and instructed him to come down from the stairs and they asked him about the plant he was carrying.[27]

Based on the foregoing, in effecting the warrantless arrest, the police officers relied solely on the tip that they received from the confidential

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[23] *Villamor v. People*, 807 Phil. 894, 904 (2017).
[24] *Macad v. People*, 838 Phil. 102, 120 (2018).
[25] 640 Phil. 669 (2010).
[26] *Id.* at 676-677. (Citations omitted)
[27] CA *rollo*, pp. 58-59.

informant. It is settled that reliable information alone is insufficient to support a warrantless arrest absent any overt act from the person to be arrested indicating that a crime has just been committed, was being committed, or is about to be committed.[28]

As stated above, when the police officers saw accused-appellant, he was simply going downstairs while holding a potted plant. Accused-appellant was, at this moment, not committing a crime and it was not even shown that he was about to do so or that he had just done so. What he was doing was descending from the stairs, and there was no outward indication that called for his arrest.

Also, the fact that accused-appellant was holding a pot, which the police suspected to be a *marijuana* plant is not a justification to effect the warrantless arrest. The Court has held that a reasonable suspicion is not synonymous with the personal knowledge required under Section 5(a) to effect a valid warrantless arrest.[29] The facts of the case clearly indicate that PO2 Tanay merely assumed that the plant he saw in the pot being carried by accused-appellant was *marijuana* based on the information relayed to them by their confidential informant. PO2 Tanay even admitted that said information was the sole basis in arriving at his conclusion. Clearly, PO2 Tanay had no personal knowledge as to the type of plant that accused-appellant was holding, to produce probable cause to believe that the plant was indeed a *marijuana* plant.

Moreover, PO2 Tanay testified that they were positioned at a distance of 10 meters from the house when they saw accused-appellant going downstairs holding a plant in a pot. At such a distance, the police officers would not be able to discern as to the type of plant that accused-appellant was holding. They cannot be said to be equipped with personal knowledge in the commission of a crime. In *Dominguez v. People*,[30] the search made by a police officer on the accused, whom he had seen from a meter away holding a plastic sachet, was acquitted of the charge of illegal possession of dangerous drugs, with this Court discussing as follows:

> The circumstances as stated above do not give rise to a reasonable suspicion that Dominguez was in possession of shabu. From a meter away, even with perfect vision, SPO1 Parchaso would not have been able to identify with reasonable accuracy the contents of the plastic sachet. Dominguez' acts of standing on the street and holding a plastic sachet in his hands, are not by themselves sufficient to incite suspicion of criminal activity or to create probable cause enough to justify a warrantless arrest. In fact, SPO1 Parchaso's testimony reveals that before the arrest was made, he only saw that Dominguez was holding a small plastic sachet. He was unable to describe what said plastic sachet contained, if any. He only mentioned that the plastic contained "*pinaghihinalaang shabu*" after he had already arrested Dominguez and subsequently confiscated said plastic sachet[.]

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28 *Veridiano v. People*, 810 Phil. 642, 661-662 (2017).

29 *Manibog v. People*, G.R. No. 211214, March 20, 2019.

30 G.R. No. 235898, March 13, 2019.

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The present case is similar to *People v. Villareal*, where the Court held that the warrantless arrest of the accused was unconstitutional, as simply holding something in one's hands cannot in any way be considered as a criminal act:

> On the basis of the foregoing testimony, the Court finds it inconceivable how PO3 de Leon, even with his presumably perfect vision, would be able to identify with reasonable accuracy, from a distance of *about 8 to 10 meters* while *simultaneously driving a motorcycle*, a negligible and minuscule amount of powdery substance (0.03 gram) inside the plastic sachet allegedly held by appellant. That he had previously effected numerous arrests, all involving *shabu*, is insufficient to create a conclusion that what he purportedly saw in appellant's hands was indeed *shabu*.
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> **Absent any other circumstance upon which to anchor a lawful arrest, no other overt act could be properly attributed to appellant as to rouse suspicion in the mind of PO3 de Leon that he (appellant) had just committed, was committing, or was about to commit a crime, for the acts per se of walking along the street and examining something in one's hands cannot in any way be considered criminal acts.** In fact, even if appellant had been exhibiting unusual or strange acts, or at the very least appeared suspicious, the same would not have been sufficient in order for PO3 de Leon to effect a lawful warrantless arrest under paragraph (a) of Section 5, Rule 113.
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> x x x x

The prosecution failed to establish the conditions set forth in Section 5 (a), Rule 11362 of the Rules of Court that: (a) 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 (b) such overt act is done in the presence or within the view of the arresting officer. As already discussed, standing on the street and holding a plastic sachet in one's hands cannot in any way be considered as criminal acts. Verily, it is not enough that the arresting officer had reasonable ground to believe that the accused had just committed a crime; a crime must, in fact, have been committed first, which does not obtain in this case.[31] (Emphasis in the original, citations omitted)

Applying the principle herein, the police officers, who were at a distance of 10 meters away from accused-appellant, cannot be said to have properly determined the nature of the plant that he was holding was a *marijuana* plant. As it turned out, he was merely descending the stairs while holding a plant. Without any circumstance presented by the prosecution, it is doubtful how the police officers were able to recognize that the plant accused-

31 *Id.*

appellant was carrying was a *marijuana* plant. It bears noting that before resorting to a search incidental to a lawful arrest, the existence of a crime must first be established. There being none, the search made on accused-appellant cannot be considered as a valid warrantless search.

It bears emphasizing that the failure of accused-appellant to timely object to the illegality of his arrest does not preclude him from questioning the admissibility of the evidence seized. "The inadmissibility of the evidence is not affected when an accused fails to question the court's jurisdiction over their person in a timely manner. Jurisdiction over the person of an accused and the constitutional inadmissibility of evidence are separate and mutually exclusive consequences of an illegal arrest."[32]

Neither can this Court consider the search conducted on the rooftop where they discovered two more pots of *marijuana* plant as a valid consented search.

According to PO2 Tanay, they asked accused-appellant if they can go inside the house and the latter allowed them to enter the house. Upon entering the house, they proceeded to the rooftop where they discovered two more pots of *marijuana* plant.

This Court has held that the consent to a warrantless search and seizure must be "unequivocal, specific, intelligently given, and unattended by duress or coercion.[33] Mere passive conformity to the warrantless search is only an implied acquiescence which does not amount to consent and that the presence of a coercive environment negates the claim that [accused-appellant] therein consented to the warrantless search."[34]

Here, an inquiry into the environment in which the consent was given shows that at that time, accused-appellant was in the company of two police officers. Thus, it can be said that accused-appellant act of allowing the police officers to enter the house was a mere passive conformity due the presence of a coercive and intimidating environment. It should be noted also that PO2 Tanay only asked if they could enter the house. However, there was no consent given to allow them to search the premises of the house, like going to the rooftop where they discovered two more pots of *marijuana* plant. Thus, assuming there is consent, accused-appellant consented only for them to enter the house but not to search the entire premises of the house, specifically going to the rooftop of the house.

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[32] *Veridiano v. People, supra* note 26, at 654.

[33] *Peope v. Sapla*, G.R. No. 244045, June 16, 2020.

[34] *Id.*

Accordingly, there being no valid warrantless search under a search incidental to a lawful arrest and a valid consented search, the *marijuana* plants seized from accused-appellant are rendered inadmissible in evidence for being the proverbial fruit of the poisonous tree. As the seized *marijuana* plants are the very *corpus delicti* of the crime charged, accused-appellant must be acquitted and exonerated from criminal liability.

WHEREFORE, the appeal is **GRANTED**. The Decision of the Court of Appeals dated January 16, 2018 in CA-G.R. CR HC-No. 08654 is hereby **REVERSED** and **SET ASIDE**. Accused-appellant Ronilo Jumarang *y* Mulingbayan is **ACQUITTED** in Criminal Case No. Ir-9174 for violation of Section 16 (Cultivation or Culture of Plants Classified as Dangerous Drugs or are Sources Thereof), Article II of Republic Act No. 9165 otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause.

Let a copy of this Decision be furnished to the Director General of the Bureau of Corrections, Muntinlupa City for immediate implementation. The Director is directed to report to this Court the action taken within five (5) days from receipt of this Decision. Copies shall also be furnished to the Police General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency for their information.

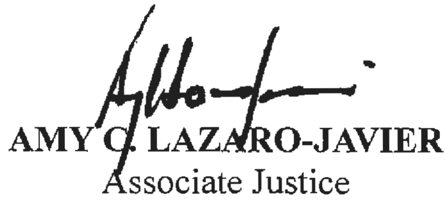
Let an entry of judgment be issued.

SO ORDERED."

JHOSEP Y. LOPEZ
Associate Justice

WE CONCUR:

MARVIC M.V.F. LEONEN
Senior Associate Justice



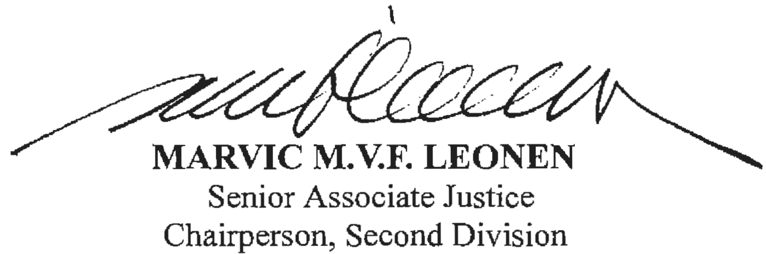
AMY C. LAZARO-JAVIER
Associate Justice

(On official leave)
MARIO V. LOPEZ
Associate Justice

ANTONIO T. KHO, JR.
Associate Justice

ATTESTATION

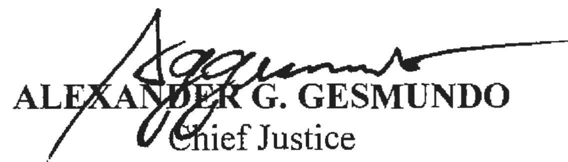
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Second 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.



ALEXANDER G. GESMUNDO
Chief Justice