

## SECOND DIVISION

[ G.R. No. 238659, June 03, 2019 ]

**FRANKLIN B. VAPOROSO AND JOELREN B. TULILIK,  
PETITIONERS, V. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

### D E C I S I O N

**PERLAS-BERNABE, J.:**

Before the Court is a petition for review on *certiorari*<sup>[1]</sup> filed by petitioners Franklin B. Vaporoso (Vaporoso) and Joelren B. Tulilik (Tulilik; collectively, petitioners) assailing the Decision<sup>[2]</sup> dated November 17, 2017 and the Resolution<sup>[3]</sup> dated February 26, 2018 of the Court of Appeals (CA) in CA-G.R. CR No. 01414-MIN which affirmed the Decision<sup>[4]</sup> dated December 14, 2015 of the Regional Trial Court of Panabo City, Davao del Norte, Branch 34 (RTC) in Criminal Case Nos. CrC 430-2013 and CrC 431- 2013, finding them guilty beyond reasonable doubt of the crime of Illegal Possession of Dangerous Drugs, defined and penalized under Section 11, Article II of Republic Act No. 9165,<sup>[5]</sup> otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

#### The Facts

This case stemmed from two (2) separate Informations<sup>[6]</sup> filed before the RTC charging petitioners of the crime of Illegal Possession of Dangerous Drugs. The prosecution alleged that at around 7:00 in the evening of August 25, 2013, while Police Officer 2 Alexander D. Torculas (PO2 Torculas) was patrolling along National Highway, Barangay Salvacion, Panabo City, he noticed two (2) men - later on identified as petitioners - aboard a motorcycle with the back rider holding a lady bag which appeared to have been taken from a vehicle parked on the side of the road. When PO2 Torculas shouted at petitioners to halt, the latter sped away. At this point, the owner of the vehicle, Narcisa Dombase (Dombase), approached PO2 Torculas and told him that petitioners broke the window of her vehicle and took her belongings. This prompted PO2 Torculas to chase petitioners until the latter entered a dark, secluded area in Bangoy Street, prompting him to call for back-up.<sup>[7]</sup> Shortly after, Police Officer 1 Ryan B. Malibago (PO1 Malibago), together with some Intel Operatives, arrived and joined PO2 Torculas in waiting for petitioners to come out of the aforesaid area.<sup>[8]</sup>

About six (6) hours later, or at around 1:00 in the morning of the following day, PO2 Torculas and PO1 Malibago saw petitioners come out and decided to approach them. Petitioners, however, attempted to flee, but PO2 Torculas and PO1 Malibago were able to apprehend them.<sup>[9]</sup> After successfully recovering Dombase's bags and belongings from petitioners,<sup>[10]</sup> the police officers conducted an initial cursory body search on the latter, and thereafter, brought them to the Panabo Police Station. Thereat, the police officers conducted another "more thorough" search on

petitioners, which yielded (5) plastic sachets containing white crystalline substance from Vaporoso and four (4) plastic sachets with similar white crystalline substance from Tulilik. PO1 Malibago then marked the said items in the presence of petitioners and conducted the requisite photo-taking and inventory in the presence of Department of Justice (DOJ) representative Ian Dionalo, Kagawad Elpidio Pugata, and media representative Jun Gumban. At around 10:15 in the morning of August 26, 2013, the seized items were turned over to the Provincial Crime Laboratory of Tagum City, where, upon examination, tested positive for the presence of methamphetamine hydrochloride or *shabu*, a dangerous drug.<sup>[11]</sup> On December 18, 2013, the subject sachets were delivered to the court.<sup>[12]</sup>

During arraignment, or on October 9, 2013, petitioners pleaded not guilty to the charges.<sup>[13]</sup> On September 10, 2015, trial was dispensed with as the parties agreed to simply stipulate on the factual matters of the case.<sup>[14]</sup> On September 16, 2015, they were directed to submit their respective memorandum.<sup>[15]</sup>

### **The RTC Ruling**

In a Decision<sup>[16]</sup> dated December 14, 2015, the RTC found petitioners guilty beyond reasonable doubt of the crime of Illegal Possession of Dangerous Drugs, and accordingly, sentenced each of them to suffer the indeterminate penalty of imprisonment of fourteen (14) years, as minimum, to seventeen (17) years, as maximum, and ordered each of them to pay a fine of P300,000.00.<sup>[17]</sup> Ultimately, it ruled that the subsequent search conducted at the police station was a justifiable search incidental to a lawful arrest, considering that: (a) petitioners were validly arrested and thereafter placed in custody; (b) their administrative processing was not yet completed when they were searched at the police station; and (c) no substantial time had elapsed between the initial search at the place of the arrest and the subsequent search at the police station.<sup>[18]</sup>

Aggrieved, petitioners filed an appeal<sup>[19]</sup> before the CA.

### **The CA Ruling**

In a Decision<sup>[20]</sup> dated November 17, 2017, the CA affirmed *in toto* the ruling of the RTC that the body search conducted on petitioners at the police station was a valid search incidental to a lawful arrest.<sup>[21]</sup> It held that under Rule 19 of the Philippine National Police (PNP) Handbook (PNPM-DO-DS-3-2-13), a search is permissible and intended to screen contraband items or deadly weapons from suspects before placing them behind bars.<sup>[22]</sup> The CA also noted that the police officers substantially complied with the chain of custody requirement, which was categorically admitted by both parties in their stipulation of facts. On the other hand, it ruled that petitioners neither presented any evidence to support their defenses of denial and frame-up nor provided any explanation as to how they were able to possess the said prohibited drugs.<sup>[23]</sup>

Undaunted, petitioners sought reconsideration,<sup>[24]</sup> which was denied in a Resolution<sup>[25]</sup> dated February 26, 2018; hence, this petition.

### **The Court's Ruling**

At the outset, it must be stressed that in criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.<sup>[26]</sup>

Guided by this parameter and as will be explained hereunder, the Court is of the view that petitioners' conviction must be set aside.

## I.

A judicial perusal of the records reveals that the arresting police officers conducted a total of two (2) searches on petitioners, namely: (a) the body search after the police officers apprehended them; and (b) a "more thorough" search conducted at the Panabo Police Station where the seized drugs were allegedly recovered from them. In this regard, petitioners insist that these were illegal searches, and thus, the items supposedly seized therefrom are inadmissible in evidence. On the other hand, the Office of the Solicitor General (OSG), as representative of the people, maintains that the courts *a quo* correctly ruled that the drugs seized from petitioners were products of a valid search incidental to a lawful warrantless arrest.<sup>[27]</sup>

In view of the foregoing assertions, it behooves the Court to ascertain whether or not the police officers lawfully arrested petitioners without a warrant, as the resolution thereof is determinative of the validity of the consequent search made on them. This is because in searches incidental to a lawful arrest, the law requires that there first be a lawful arrest before a search can be made - the process cannot be reversed.<sup>[28]</sup> At this point, the Court notes that petitioners failed to question the legality of their arrest, and in fact, actively participated in the trial of the case. As such, they are deemed to have waived any objections involving the same.<sup>[29]</sup> Nonetheless, it must be clarified that the foregoing constitutes a waiver **only** as to any question concerning any defects in their arrest, **and not** with regard to the inadmissibility of the evidence seized during an illegal warrantless arrest. In *Sindac v. People*,<sup>[30]</sup> the Court held:

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.**

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

<sup>[31]</sup> (Emphasis and underscoring supplied)

In this light, there is a need to determine whether or not the police officers conducted a valid warrantless arrest on petitioners, notwithstanding the latter's waiver to question the same.

## II.

Section 5, Rule 113 of the Revised Rules on Criminal Procedure provides the general parameters for effecting lawful warrantless arrests, to wit:

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 is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with Section 7 of Rule 112.

Based on the foregoing provision, there are three (3) instances when warrantless arrests may be lawfully effected. These are: (a) an arrest of a suspect *in flagrante delicto*; (b) **an arrest of a suspect where, based on personal knowledge of the arresting officer, there is probable cause that said suspect was the perpetrator of a crime which had just been committed**; and (c) an arrest of a prisoner who has escaped from custody serving final judgment or temporarily confined during the pendency of his case or has escaped while being transferred from one confinement to another.<sup>[32]</sup>

In warrantless arrests made pursuant to **Section 5 (b), Rule 113, it is required that at the time of the arrest, an offense had in fact just been committed and the arresting officer had personal knowledge of facts indicating that the accused had committed it.**<sup>[33]</sup> Verily, under Section 5 (b), Rule 113, it is essential that **the element of personal knowledge must be coupled with the element of immediacy**; otherwise, the arrest may be nullified, and resultantly, the items yielded through the search incidental thereto will be rendered inadmissible in consonance with the exclusionary rule of the 1987 Constitution.<sup>[34]</sup> In *People v. Manago*,<sup>[35]</sup> the Court held:

In other words, **the clincher in the element of "personal knowledge of facts or circumstances" is the required element of immediacy within which these facts or circumstances should be gathered. This required time element acts as a safeguard to ensure that the police officers have gathered the facts or perceived the circumstances within a very limited time frame. This guarantees**