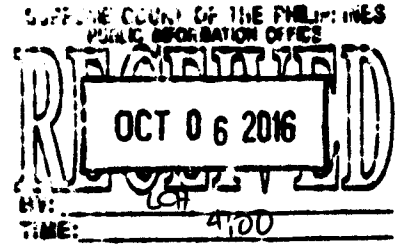




Republic of the Philippines
 Supreme Court
 Manila



FIRST DIVISION

ELMER G. SINDAC @ G.R. No. 220732
“TAMER,”

Petitioner, Present:

- versus -

THE PEOPLE OF THE
PHILIPPINES,

Respondent.

SERENO, C.J., Chairperson,
 LEONARDO-DE CASTRO,
 BERSAMIN,*
 PERLAS-BERNABE, and
 CAGUIOA, JJ.

Promulgated:

SEP 06 2016

X-----X

DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*¹ are the Decision² dated May 26, 2015 and the Resolution³ dated September 18, 2015 of the Court of Appeals (CA) in CA-G.R. CR. No. 35413, which affirmed the Decision⁴ dated October 31, 2012 of the Regional Trial Court of Infanta, Quezon, Branch 65 (RTC) in Criminal Case No. 2866-I finding petitioner Elmer G. Sindac @ “Tamer” (Sindac) guilty beyond reasonable doubt for violating Section 11, Article II of Republic Act No. (RA) 9165,⁵ otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

* On official leave.

¹ *Rollo*, pp. 11-25.

² Id. at 31-41. Penned by Associate Justice Nina G. Antonio-Valenzuela with Associate Justices Magdangal M. De Leon and Jane Aurora C. Lantion concurring.

³ Id. at 43-44.

⁴ Id. at 71-77. Penned by Presiding Judge Arnelo C. Mesa.

⁵ Entitled “AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES,” approved on June 7, 2002.

The Facts

The instant case stemmed from an Information⁶ dated May 30, 2007 filed before the RTC charging Sindac of illegal possession of dangerous drugs, defined and penalized under Section 11, Article II of RA 9165,⁷ the accusatory portion of which reads:

That on or about the 17th day of April, 2007, at Brgy. Poblacion Uno, in the Municipality of Real, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there, willfully, unlawfully and feloniously have in his possession, control and custody one (1) transparent plastic pack containing white crystalline substance weighing 0.04 gram which when examined, gave positive results to the tests for methamphetamine hydrochloride, commonly known as *shabu*, a dangerous drug.

CONTRARY TO LAW⁸

The prosecution alleged that from March 15, 2007 to April 30, 2007, the Philippine National Police, Real, Quezon (PNP Real), conducted surveillance operations on Sindac's alleged drug trade. At around 7 o'clock in the morning of April 17, 2007, the PNP Real conducted a briefing, and thereafter, proceeded to the port of Barangay Ungos. There, PO3 Bonifacio Peñamora (PO3 Peñamora) and PO1 Erbert Asis (PO1 Asis) saw Sindac headed for Barangay Poblacion Uno, prompting them to follow him. Along the national road of said barangay, PO3 Peñamora and PO1 Asis saw Sindac meet with a certain Alladin Cañon (Cañon) who sold and handed over a plastic sachet to him. Suspecting that the sachet contained *shabu*, PO3 Peñamora and PO1 Asis rushed to the scene and introduced themselves as police officers. Cañon escaped but the policemen were able to apprehend Sindac. When ordered to empty his pocket, Sindac brought out his wallet which contained a small plastic sachet containing white crystalline substance. After initially determining that such substance is *shabu*, the policemen arrested Sindac and brought him to the police station. There, Sindac's arrest was recorded, the seized item was marked in Sindac's presence, and a request for chemical test was prepared. A laboratory

⁶ Records, pp. 2-3

⁷ The pertinent portions of Section 11, Article II of RA 9165 reads:

Section 11. *Possession of Dangerous Drugs.* – The penalty of x x x shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug x x x regardless of purity thereof:

x x x x

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of x x x methamphetamine hydrochloride or "shabu" x x x.

⁸ Records, p. 2.

examination later confirmed that the plastic sachet seized from Sindac contained methamphetamine hydrochloride or *shabu*.⁹

In his defense, Sindac denied that he possessed illegal drugs. He claimed that at around 7 o'clock in the morning of April 17, 2007, he was riding a tricycle bound for Barangay Ungos when PO3 Peñamora stopped the vehicle and ordered him to get off. PO3 Peñamora then invited him to the police station, to which he complied. There, he was made to undress and was frisked by PO3 Peñamora, who found nothing. PO3 Peñamora left with Sindac's wallet and mobile phone, and when he returned, his wallet was searched anew and a sachet of suspected *shabu* was found inside, to his surprise. PO3 Peñamora then made Sindac sign a blank piece of paper which turned out to be a receipt for evidence seized.¹⁰ Upon arraignment, Sindac pleaded not guilty to the charges levelled against him.¹¹

The RTC Ruling

In a Decision¹² dated October 31, 2012, the RTC found Sindac guilty beyond reasonable doubt of the crime charged and, accordingly, sentenced him to suffer the penalty of imprisonment for the indeterminate period of six (6) years and one (1) day, as minimum, to twelve (12) years and one (1) day, as maximum, including all the accessory penalties, and ordered him to pay a fine of ₱300,000.00 as well as the costs of suit.¹³

The RTC found that the prosecution had established all the elements of illegal possession of dangerous drugs: (a) Sindac possessed a sachet of *shabu*; (b) he was not authorized by law to do so; and (c) he freely and consciously possessed the said drug. In this regard, the RTC held that the policemen substantially complied with the chain of custody rule as they adequately justified their failure to strictly comply thereto and they had preserved the integrity and evidentiary value of the seized contraband. Finally, the RTC opined that the policemen committed a valid *in flagrante delicto* warrantless arrest on Sindac pursuant to Section 5 (a), Rule 113 of the Rules of Court.¹⁴

Aggrieved, Sindac appealed¹⁵ his conviction before the CA.

⁹ See *rollo*, pp. 32-33.

¹⁰ Id. at 33-34.

¹¹ Id. at 32.

¹² Id. at 71-77.

¹³ Id. at 77.

¹⁴ See id. at 75-77.

¹⁵ See Notice of Appeal dated November 15, 2012; records, pp. 294-295. See also Brief for Accused-Appellant dated September 2, 2013; CA *rollo*, pp. 18-37.

✓

The CA Ruling

In a Decision¹⁶ dated May 26, 2015, the CA affirmed Sindac's conviction, holding that: (a) the prosecution had established the presence of all the elements of the crime of illegal possession of dangerous drugs;¹⁷ (b) the policemen substantially complied with the chain of custody rule;¹⁸ and (c) Sindac is estopped from questioning the legality of his warrantless arrest as he failed to raise such issue before entering his plea during the arraignment.¹⁹

Undaunted, Sindac moved for reconsideration,²⁰ which was, however, denied in a Resolution²¹ dated September 18, 2015; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether Sindac's conviction for violation of Section 11, Article II of RA 9165 should be upheld.

The Court's Ruling

The appeal is meritorious.

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.²²

In this light and as will be explained hereunder, the Court is of the view that Sindac's conviction must be set aside.

Section 2,²³ Article III of the 1987 Constitution mandates that **a search and seizure must be carried out through or on the strength of a**

¹⁶ *Rollo*, pp. 31-41.

¹⁷ See *id.* at 36-37.

¹⁸ See *id.* at 37-40.

¹⁹ *Id.* at 40.

²⁰ See motion for reconsideration dated June 30, 2015; *id.* at 45-50.

²¹ *Id.* at 43-44.

²² See *People v. Comboy*, G.R. No. 218399, March 2, 2016, citing *Manansala v. People*, G.R. No. 215424, December 9, 2015.

²³ Section 2, Article III of the 1987 Constitution states:

judicial warrant predicated upon the existence of probable cause, absent which, such search and seizure becomes “unreasonable” within the meaning of said constitutional provision. To protect the people from unreasonable searches and seizures, Section 3 (2),²⁴ Article III of the 1987 Constitution provides that **evidence obtained from unreasonable searches and seizures shall be inadmissible in evidence for any purpose in any proceeding.** In other words, evidence obtained and confiscated on the occasion of such unreasonable searches and seizures are deemed tainted and should be excluded for being the proverbial fruit of a poisonous tree.²⁵

One of the recognized exceptions to the need for a warrant before a search may be affected is a search incidental to a lawful arrest. **In this instance, the law requires that there first be a lawful arrest before a search can be made – the process cannot be reversed.**²⁶

A lawful arrest may be effected with or without a warrant. With respect to the latter, the parameters of Section 5, Rule 113 of the Revised Rules of Criminal Procedure should – as a general rule – be complied with:

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.

Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause 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 persons or things to be seized.

²⁴ Section 3 (2), Article III of the 1987 Constitution states:

Section 3. x x x.

(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

²⁵ See *People v. Manago*, G.R. No. 212340, August 17, 2016, citing *Comerciante v. People*, G.R. No. 205926, July 22, 2015, 763 SCRA 587, 594-595.

²⁶ See *id.*

K

The aforementioned provision identifies 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.²⁷

In warrantless arrests made pursuant to Section 5 (a), Rule 113, two (2) elements must concur, namely: (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. On the other hand, Section 5 (b), Rule 113 requires for its application 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.²⁸

In both instances, the officer's personal knowledge of the fact of the commission of an offense is essential. Under Section 5 (a), Rule 113 of the Revised Rules of Criminal Procedure, the officer himself witnesses the crime; while in Section 5 (b) of the same, he knows for a fact that a crime has just been committed.²⁹

In this case, the Court finds that there could have been no lawful warrantless arrest made on the person of Sindac. Based on the records, the arresting officer, PO3 Peñamora, himself admitted that he was about five (5) to ten (10) meters away from Sindac and Cañon when the latter allegedly handed a plastic sachet to the former. Suspecting that the sachet contained *shabu*, he and PO1 Asis rushed to Sindac to arrest him. PO3 Peñamora's testimony on direct examination reveals:³⁰

[Prosecutor Cherry May P. Avellano (Fiscal Avellano)]: Where did this selling of *shabu* take place?

[PO3 Peñamora]: At Poblacion Uno, Real, Quezon, ma'am.

[Fiscal Avellano]: How did you know that there were selling of *shabu* that took place at Poblacion Uno, Real, Quezon [(Poblacion Uno)]?

[PO3 Peñamora]: We followed him from Ungos to [Poblacion Uno], ma'am.

²⁷ *Comerciante v. People*, supra note 25, at 596, citing *Malacat v. CA*, 347 Phil. 462, 479 (1997).

²⁸ *Id.*, citing *People v. Villareal*, 706 Phil. 511, 517-518 (2013).

²⁹ *Id.* at 596-597.

³⁰ TSN, January 13, 2010, pp. 5-10.

2

[Fiscal Avellano]: Where in particular did you proceed in [Poblacion Uno] wherein you followed him?

[PO3 Peñamora]: Along the national road, ma'am.

[Fiscal Avellano]: When you saw [Sindac] selling *shabu*, how far were you located to that person?

[PO3 Peñamora]: 5 to 10 meters ma'am.

[Fiscal Avellano]: When you said there was selling of *shabu*, what was the participation of [Sindac] in the selling?

[PO3 Peñamora]: He was the buyer, ma'am.

[Fiscal Avellano]: Who was the seller then?

[PO3 Peñamora]: Alladin Cañon alias Indong, ma'am.

[Fiscal Avellano]: What did [Cañon] do when you said he was selling *shabu* to [Sindac]?

[PO3 Peñamora]: He handed the *shabu* to [Sindac], ma'am.

[Fiscal Avellano]: And what did [Sindac] do when [Cañon] handed *shabu* to [Sindac]?

[PO3 Peñamora]: He took it, ma'am.

[Fiscal Avellano]: What did he do after he took the *shabu*?

[PO3 Peñamora]: He kept the *shabu* in his hand, ma'am.

[Fiscal Avellano]: After [Sindac] kept the *shabu* in his hand, what did you do next?

[PO3 Peñamora]: We approached them, ma'am.

x x x x

[Fiscal Avellano]: After you arrested [Sindac], what did you do next if there was any?

[PO3 Peñamora]: We searched his pocket ma'am.

[Fiscal Avellano]: Were you the one who personally searched the pocket of [Sindac]?

[PO3 Peñamora]: No ma'am, we ordered him to put out his wallet?

[Fiscal Avellano]: Did he comply with your order?

[PO3 Peñamora]: Yes ma'am.

[Fiscal Avellano]: What did he do?

[PO3 Peñamora]: He turned out his pocket and showed his wallet, ma'am.

COURT

[Presiding Judge Arnelo C. Mesa (Judge Mesa)]: What was the result of that turning over his pocket and showing his wallet?

[PO3 Peñamora]: From his wallet I saw a small plastic folded, Your Honor.

[Judge Mesa]: Upon seeing this small plastic folded inside the pocket of his wallet, what transpired next if any?

[PO3 Peñamora]: As a policeman, I suspected it as *shabu* so I ordered him to take out the small plastic, Your Honor.

x x x x

[Judge Mesa]: Was it containing something?

[PO3 Peñamora]: Yes, Your Honor.

[Judge Mesa]: What was the content?

[PO3 Peñamora]: Crystalline substance, Your Honor.

[Judge Mesa]: Was there a color of the crystalline substance?

[PO3 Peñamora]: Colorless, looks like a *tawas*, Your Honor.

[Judge Mesa]: After he took out and showed to you this folded small plastic, what transpired next?

[PO3 Peñamora]: I took it from him, Your Honor.

x x x x

[Fiscal Avellano]: After you took that plastic sachet containing white crystalline substance, what did you do next if any?

x x x x

[PO3 Peñamora]: I concluded that it to be a suspected shabu and I informed him that I will bring him to the police station and we arrested him, ma'am.

[Fiscal Avellano]: After you arrested him, what did you do next?

[PO3 Peñamora]: We brought him to the Municipal Police Station, we entered the matter to the police blotter and we prepared a receipt for evidence seized, ma'am. (Emphases and underscoring supplied)

Considering that PO3 Peñamora was at a considerable distance away from the alleged criminal transaction (five [5] to ten [10] meters), not to mention the atomity of the object thereof (0.04 gram of white crystalline

substance³¹ contained in a plastic sachet), the Court finds it highly doubtful that said arresting officer was able to reasonably ascertain that any criminal activity was afoot so as to prompt him to conduct a lawful *in flagrante delicto* arrest and, thereupon, a warrantless search. These similar circumstances were availing in the cases of *Comerciante v. People*³² and *People v. Villareal*³³ where the Court likewise invalidated the *in flagrante delicto* arrest and ensuing warrantless search. In this relation, it should also be pointed out that no criminal overt act could be properly attributed to Sindac so as to rouse any reasonable suspicion in the mind of either PO3 Peñamora or PO1 Asis that Sindac had just committed, was committing, or was about to commit a crime. Sindac's actuations of talking to and later on, receiving an unidentified object from Cañon, without more, should not be considered as ongoing criminal activity that would render proper an *in flagrante delicto* arrest under Section 5 (a), Rule 113 of the Revised Rules of Criminal Procedure.

Neither has the prosecution established that the conditions set forth in Section 5 (b), Rule 113 – that is, that an offense had in fact just been committed and the arresting officer had personal knowledge of facts indicating that the accused had committed it – have been complied with. From the circumstances above-discussed, it is fairly suspect that PO3 Peñamora had personal knowledge that a crime had been committed by Sindac. According to jurisprudence, “the arresting officer’s determination of probable cause under Section 5 (b), Rule 113 of the Revised Rules of Criminal Procedure is based on his personal knowledge of facts or circumstances that the person sought to be arrested has committed the crime. These facts or circumstances pertain to actual facts or raw evidence, *i.e.*, supported by circumstances sufficiently strong in themselves to create the probable cause of guilt of the person to be arrested,”³⁴ which, however do not obtain in this case.

Based on the foregoing, it is, in fact, quite perceivable that PO3 Peñamora and PO1 Asis had proceeded to apprehend Sindac solely on account of information retrieved from previous surveillance operations conducted on Sindac’s alleged drug dealing activities. Advancing to a warrantless arrest based only on such information, absent circumstances that would lead to the arresting officer’s “personal knowledge” as described in case law, unfortunately, skews from the exacting requirements of Section 5, Rule 113. It is settled that “reliable information” alone – even if it was a product of well-executed surveillance operations – is not sufficient to justify a warrantless arrest. It is further required that the accused performs some overt act that would indicate that he has committed, is actually committing,

³¹ See records, p. 2.

³² See supra note 25, at 597-603.

³³ See supra note 28, at 518-520.

³⁴ *Pestilos v. Generoso*, G.R. No. 182601, November 10, 2014, 739 SCRA 337, 367.

or is attempting to commit an offense,³⁵ which, as already discussed, is missing in the instant case.

In *People v. Villareal*,³⁶ the Court highlighted the importance of the “personal knowledge” requirement by elucidating that:³⁷

To interpret “personal knowledge” as referring to a person’s reputation or past criminal citations would create a dangerous precedent and unnecessarily stretch the authority and power of police officers to effect warrantless arrests based solely on knowledge of a person’s previous criminal infractions, rendering nugatory the rigorous requisites laid out under Section 5[, Rule 113 of the Revised Rules of Criminal Procedure].

Verily, warrantless arrests conducted without this indispensable requisite should be struck down as unlawful, as in this case.

This is not the first instance where the Court, despite the existence of reliable information on the part of the arresting officer, invalidated a warrantless arrest of an accused on account of such officer’s lack of personal knowledge that the accused has committed, is actually committing, or is attempting to commit an offense. In *People v. Racho*,³⁸ the Court invalidated the warrantless arrest made on the person of the accused despite a confidential agent explicitly identifying him as a drug-dealer. In that case, the Court noted that at the time of the arrest, the accused was neither committing a crime in the presence of the police officers nor acting in a suspicious manner that would engender a reasonable ground for the police officers to suspect and conclude that he was committing or intending to commit a crime. Further, the Court held that the arresting officers were not impelled by any urgency that would allow them to do away with the requisite warrant, especially considering that they received the “tipped information” a day before conducting a warrantless arrest on the accused. To the Court, the arresting officers had ample opportunity to apply for a warrant. As such, their failure to do so renders the warrantless arrest, as well as the search made incidental thereto, invalid, thus, resulting in the acquittal of therein accused.³⁹

As a consequence of the Sindac’s unlawful arrest, it follows that there could be no valid search incidental to a lawful arrest which had yielded the plastic sachet containing 0.04 gram of *shabu* from Sindac. Notably, while it is true that Sindac: (a) failed to question the legality of the warrantless arrest against him before arraignment; and (b) actively participated in the trial of the case, it must nevertheless be clarified that the foregoing constitutes a

³⁵ See *People v. Racho*, 640 Phil. 669, 678 (2010); citations omitted.

³⁶ *Supra* note 28.

³⁷ *Id.* at 521.

³⁸ *Supra* note 35.

³⁹ See *id.* at 674-682.

N

waiver **ONLY** as to any question concerning any defects in his arrest, **AND NOT** with regard to the inadmissibility of the evidence seized during an illegal warrantless arrest. In *Homar v. People*⁴⁰:

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.⁴¹ (Emphasis and underscoring supplied)


All told, since the *shabu* purportedly seized from Sindac constitutes inadmissible evidence in violation of Section 3 (2), Article III of the 1987 Constitution, and given that the confiscated *shabu* is the very *corpus delicti* of the crime charged, the Court finds Sindac's conviction to be improper and therefore, acquits him.

WHEREFORE, the appeal is **GRANTED**. The Decision dated May 26, 2015 and the Resolution dated September 18, 2015 of the Court of Appeals in CA-G.R. CR. No. 35413 are hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Elmer G. Sindac alias "Tamer" is **ACQUITTED** for violating Section 11, Article II of Republic Act No. 9165. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held for any other reason.

SO ORDERED.


ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

⁴⁰ See G.R. No. 182534, September 2, 2015.

⁴¹ See *id.*; citation omitted.


Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

On Official Leave
LUCAS P. BERSAMIN
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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