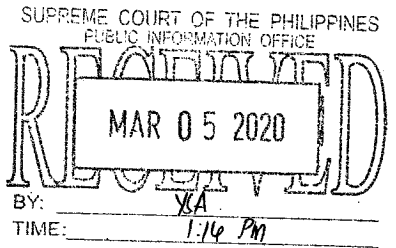




REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila  
SECOND DIVISION



**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated 29 January 2020 which reads as follows:*

“G.R. No. 242154 (**Jhay Garcia y Bansag v. People of the Philippines**). — Assailed in this petition for review on *certiorari*<sup>1</sup> are the Decision<sup>2</sup> dated February 14, 2018 and the Resolution<sup>3</sup> dated September 11, 2018 of the Court of Appeals (CA) in CA-G.R. CR No. 39797, which affirmed the Decision<sup>4</sup> dated March 1, 2017 of the Regional Trial Court of Manila City, National Capital Judicial Region, Branch 15 (RTC) in Crim. Case No. 16-328172, finding petitioner Jhay Garcia y Bansag (Garcia) guilty beyond reasonable doubt of the crime of Illegal Possession of Dangerous Drugs, defined and penalized under Section 11 (3), Article II of Republic Act No. (RA) 9165,<sup>5</sup> otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

**The Facts**

This case stemmed from an Information<sup>6</sup> filed before the RTC accusing Garcia of the crime of Illegal Possession of Dangerous Drugs. The prosecution alleged that at around 1:00 o'clock in the afternoon of August 20, 2016, Police Officer (PO) 1 Roven Jay P. Dotimas (PO1 Dotimas) and PO1 Cresencio Appegu (PO1 Appegu) were conducting a foot patrol along Quezon Boulevard, Quiapo, Manila when they noticed two (2) persons acting suspiciously in front of Andok's as “they kept on looking around.”<sup>7</sup> At a distance of approximately eight (8) to ten (10) meters away, the police officers saw one of the men (later identified as Garcia) show his companion a small plastic sachet containing white crystalline substance. As they drew nearer to the pair, they began to suspect that the sachet contained *shabu*. This prompted PO1 Dotimas to grab the right hand of Garcia

<sup>1</sup> *Rollo*, pp. 11-33.

<sup>2</sup> *Id.* at 37-58-A. Penned by Associate Justice Apolinario D. Bruselas, Jr. with Associate Justices Socorro B. Inting and Rafael Antonio M. Santos, concurring.

<sup>3</sup> *Id.* at 60-63. Penned by Associate Justice Apolinario D. Bruselas, Jr. with Associate Justices Jane Aurora C. Lantion and Rafael Antonio M. Santos, concurring.

<sup>4</sup> *Id.* at 90-100. Penned by Presiding Judge Eduardo Ramon R. Reyes.

<sup>5</sup> 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.

<sup>6</sup> Dated September 2, 2016. Records, pp. 2-3.

<sup>7</sup> See *rollo*, pp. 41-42.

which, in turn, caused Garcia's companion to flee. PO1 Appegu gave chase but was unable to catch him. Thereafter, they frisked the body of Garcia and asked him to empty his pockets, revealing another piece of plastic sachet containing white crystalline substance. They then brought Garcia to the police station, with PO1 Dotimas retaining custody of the two (2) plastic sachets during the interval. At the police station, PO1 Dotimas marked the two (2) plastic sachets with "JG" and "JG1". They then took photos of the accused along with the witnesses. The Receipt of Property/Evidence Seized<sup>8</sup> was then prepared by PO3 Jansen Rey G. San Pedro and was signed by Executive Officer Manolo Jeremias, Kagawad Enrique Galima, and Media Representative Danny Garendola. PO1 Dotimas then turned over the two (2) marked plastic sachets to Police Senior Inspector (PSI) Jeffrey A. Reyes (PSI Reyes), the forensic chemist of the Manila Police District Crime Laboratory.<sup>9</sup> After examination, the contents thereof yielded positive for methamphetamine hydrochloride, or *shabu*, a dangerous drug.<sup>10</sup> PSI Reyes then turned over the two (2) marked plastic sachets to the evidence custodian until it was presented in court.<sup>11</sup>

In his defense, Garcia denied the charges against him and maintained that the accusations hurled against him were all fabricated.<sup>12</sup> He narrated that on that afternoon of August 20, 2016, he was merely waiting for a jeepney ride home in front of Andok's when he saw a tall man running towards him who was being followed by a police officer. When the police officer asked if he saw the direction where the man ran off to, he pointed to an alley. After a while, the police officer came back with a handcuffed person and met up with another police officer. They then approached him and asked if he could accompany them to the police station for investigation. He initially refused but was told that it was only for purposes of their report. At the police station, he was ushered into a room. Thereat, they pointed to some plastic sachets on a table and asked if he had any knowledge regarding the same, which he denied. While he was not handcuffed during this time, he was prevented from calling his family. The police then asked him to own up to the possession of the plastic sachets of *shabu* on the table. He did not know why the first man apprehended was allowed to leave while he was subsequently detained. He could not think of any reason why the police officers would fabricate charges against him.<sup>13</sup>

In a Decision<sup>14</sup> dated March 1, 2017, the RTC found Garcia guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced him to suffer the indeterminate penalty of imprisonment of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum, and to pay a fine in the amount of P300,000.00.<sup>15</sup> The RTC held that the prosecution was able to prove beyond reasonable doubt all the elements constituting the crime charged under Section 11, paragraph 2 (3), Article II of RA 9165. Likewise, the RTC held that the identity, integrity, and evidentiary value of the *corpus delicti* had been duly preserved and that the prosecution complied with the chain of custody rule. The RTC found Garcia's defense of denial and frame-up unavailing as no

<sup>8</sup> Records, p. 12.

<sup>9</sup> *Rollo*, pp. 39-44.

<sup>10</sup> See Chemistry Report No. D-1153-16 dated August 20, 2016; records, p. 10.

<sup>11</sup> See *rollo*, pp. 40-41.

<sup>12</sup> See *id.* at 45.

<sup>13</sup> *Id.* at 44-45.

<sup>14</sup> *Id.* at 90-100.

<sup>15</sup> *Id.* at 100.

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evidence was produced to support the same. Thus, it could not prevail over the positive testimony of the prosecution witnesses.<sup>16</sup> Aggrieved, Garcia appealed<sup>17</sup> to the CA.

In a Decision<sup>18</sup> dated February 14, 2018, the CA affirmed the RTC ruling.<sup>19</sup> It agreed with the RTC that the prosecution was able to prove all the elements of the crime charged and establish the chain of custody. It rejected Garcia's contention as to the illegality of his arrest and the subsequent search and seizure of the drugs. It held that Garcia was placed under a valid *in flagrante delicto* warrantless arrest. Moreover, he did not object to the same prior to his arraignment and, in fact, raised it for the first time on appeal. It also upheld the search as an incident to a lawful arrest.<sup>20</sup>

Garcia filed a motion for reconsideration<sup>21</sup> but was denied in a Resolution<sup>22</sup> dated September 11, 2018. Hence, this petition seeking that his conviction be overturned.

### The Court's Ruling

The petition 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."<sup>23</sup>

Based on such standard, and as will be explained hereunder, the Court is of the view that Garcia's conviction must be set aside.

Section 2,<sup>24</sup> Article III of the 1987 Constitution mandates that a 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 become "unreasonable" within the meaning of said constitutional provision.** To protect the people from unreasonable searches and seizures, Section 3 (2),<sup>25</sup> Article III of the 1987 Constitution provides that **evidence obtained from unreasonable searches and seizures shall be inadmissible in evidence for any**

<sup>16</sup> Id. at 96-99.

<sup>17</sup> See Accused-Appellant's Brief dated August 29, 2017; id. at 64-88.

<sup>18</sup> Id. at 37-58-A.

<sup>19</sup> Id. at 58.

<sup>20</sup> Id. at 47-56.

<sup>21</sup> Dated March 13, 2018. Id. at 126-135.

<sup>22</sup> Id. at 60-63.

<sup>23</sup> See *Sindac v. People*, 794 Phil. 421, 427 (2016), citing *People v. Comboy*, 782 Phil. 187, 196 (2016).

<sup>24</sup> 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.

<sup>25</sup> 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.

**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.<sup>26</sup>

One of the recognized exceptions to the need for a warrant before a search may be effected is a search incidental to a lawful arrest. In this instance, the law requires that there first be a lawful arrest, effected with or without a warrant, **before a search can be made. The process cannot be reversed.**<sup>27</sup>

Here, the CA found that the warrantless arrest was lawful as Garcia was caught *in flagrante delicto* pursuant to Section 5 (a), Rule 113 of the Revised Rules on Criminal Procedure.<sup>28</sup> Case law requires two (2) requisites for a valid *in flagrante delicto* warrantless arrest, namely 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.**<sup>29</sup>

In prior cases, the Court has held that arresting officers must reasonably ascertain that there is criminal activity afoot before conducting an arrest.<sup>30</sup> And the distance of the arresting officers from the purported *locus criminis* is determinative of whether it was plausible for them to have actually witnessed such overt acts indicating that the accused therein had just committed, were actually committing, or were attempting to commit a crime.<sup>31</sup>

Here, the Court finds that there could have been no lawful *in flagrante delicto* warrantless arrest made on Garcia. Based on the records, PO1 Dotimas himself admitted that he and PO1 Appegu were approximately eight (8) to ten (10) meters away from Garcia when they allegedly saw the latter show his companion the small plastic sachet, which they suspected to contain *shabu*. Thus, they concluded that Garcia was illegally possessing a dangerous drug, and hence, immediately arrested him and his alleged companion. Pertinent portions of PO1 Dotimas' testimony read:

[Public Prosecutor Eduardo Meneses, Jr.]: And, while conducting patrol, what happened?

[PO1 Dotimas]: While we [were] conducting patrol we noticed two (2) persons standing at the Andok[']s, sir.

Q: Where is that?

A: Along Quezon Blvd. Manila.

<sup>26</sup> *Sindac v. People*, supra note 23, at 428.

<sup>27</sup> See *id.* at 428-429; emphases supplied.

<sup>28</sup> 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;

x x x x

<sup>29</sup> See *Sindac v. People*, supra note 23, at 429-430.

<sup>30</sup> See *Villamor v. People*, 807 Phil. 894, 903-904 (2017).

<sup>31</sup> See *id.* at 907-909.

Q: And, how far away were you from these two (2) when you saw them?

A: **Approximately eight (8) to ten (10) meters, sir.**

Q: So, what did you see? What did they doing (sic) of these two (2) persons?

A: We were noticed (sic) that one of the two (2) persons was showing the other person one (1) small sachet then **we approached them to confirm our suspicion of what that object is a suspected shabu, sir.**

x x x x

Q: So, what did you do then when you saw Jhay Garcia, the accused showing this suspected shabu according to you to this other person, what did you and your [buddy] do?

A: As soon as we got nearer and confirmed that it was a shabu that he was holding I grabbed the right hand of Mr. Jhay Garcia.

Q: And what was his reaction?

A: He did not resist but his companion [ran] away, sir.

x x x x<sup>32</sup> (Emphases supplied)

Considering that the arresting officers were at a considerable distance of approximately eight (8) to ten (10) meters away from the supposed criminal transaction, it would be highly implausible for them – even assuming that they have perfect vision – to ascertain with reasonable accuracy that the aforesaid plastic sachet contained *shabu*. The arresting officers tried to justify the validity of the arrest as Garcia was acting suspiciously, *i.e.*, “always looking around x x x.”<sup>33</sup> However, the fact that Garcia was: (a) handing over a plastic sachet; and (b) looking side to side, do not, by themselves, constitute overt illegal acts. Notably, there was no other overt act that could be properly attributed to Garcia so as to rouse suspicion in the minds of the arresting officers that the former had just committed, was committing, or was about to commit a crime. Verily, these circumstances were not enough to justify a valid *in flagrante delicto* warrantless arrest on Garcia.

As a consequence of Garcia’s unlawful warrantless arrest, it necessarily follows that there was no valid search incidental to a lawful arrest which had yielded the second plastic sachet of *shabu*. While the CA correctly observed that Garcia was deemed to have waived any objections as to the legality of his arrest due to failure to question the same before arraignment, it must be clarified that the foregoing constitutes a 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.<sup>34</sup> In *Sindac v. People*,<sup>35</sup> the Court held:

<sup>32</sup> TSN, November 16, 2016, pp. 4-5.

<sup>33</sup> See *id.* at 14.

<sup>34</sup> See *Sindac v. People*, *supra* note 23, at 436.

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>36</sup>

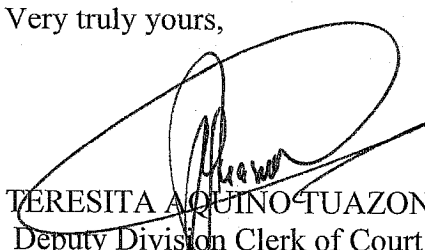
In fine, since the items seized by the police officers are inadmissible against Garcia – as these were obtained in violation of his right against unreasonable searches and seizures – and given that the alleged illegal drugs are the very *corpus delicti* of the crime charged, the Court finds Garcia's conviction to be improper and, therefore, acquits him.

**WHEREFORE**, the petition is **GRANTED**. The Decision dated February 14, 2018 and the Resolution dated September 11, 2018 of the Court of Appeals in CA-G.R. CR No. 39797 are hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Jhay Garcia y Bansag is **ACQUITTED** of the crime charged. The Director of the Bureau of Corrections is ordered to: (a) cause Garcia's immediate release, unless he is being lawfully held in custody for any other reason; and (b) inform the Court of the action taken within five (5) days from receipt of this Resolution.

Let entry of judgment be issued.

**SO ORDERED.** (Caguioa, J., designated Additional Member *vice* Inting, J., per Raffle dated January 20, 2020. Reyes, A., Jr. and Hernando, JJ., on official leave.)”

Very truly yours,

  
TERESITA AQUINO TUAZON  
Deputy Division Clerk of Court *Utth 2/27*

27 FEB 2020

<sup>35</sup>

Id.

<sup>36</sup>

Id., citing *Homar v. People*, 768 Phil. 195, 209 (2015).