Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

DANILO VILLANUEVA *y* ALCARAZ,
Petitioner,

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

G.R. No. 199042

Present:

SERENO, *CJ*, Chairperson,
*VELASCO, JR.,
LEONARDO-DE CASTRO,
PEREZ, and
PERLAS-BERNABE, *JJ.*

Promulgated:
NOV 17 2014

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DECISION

SERENO, *CJ:*

We resolve the Petition[1] filed by Danilo Villanueva *y* Alcaraz from the Decision[2] dated 4 May 2011 and Resolution[3] dated 18 October 2011 issued by the Fourteenth Division of the Court of Appeals (CA) in CA-G.R. C.R. No. 32582.

THE ANTECEDENT FACTS

Petitioner Danilo Villanueva was charged with violation of Section 11, Article II of Republic Act (R.A.) No. 9165 or The Comprehensive Dangerous Drugs Act of 2002. The Information[4] reads:

> That on or about the 15th day of June 2004 in Caloocan City, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there,

* Additional member in lieu of Associate Justice Lucas P. Bersamin per S.O. No. 1870.
[1] *Rollo*, pp. 9-33.
[2] Id. at 35-52; penned by Associate Justice Priscilla J. Baltazar-Padilla and concurred in by Associate Justices Stephen C. Cruz and Agnes Reyes Carpio.
[3] Id. at 53-54.
[4] Records, p. 2.

> willfully, unlawfully and feloniously have in his possession, custody and control METHAMPHETAMINE HYDROCHLORIDE (Shabu) weighing 0.63 gram knowing the same to [be a] dangerous drug under the provisions of the above-cited law.
>
> CONTRARY TO LAW.

On 15 July 2004, the accused, duly assisted by counsel *de oficio*, pleaded not guilty to the offense charged.[5]

PROSECUTION'S VERSION

Four witnesses testified for the prosecution: (1) Police Senior Inspector (PSI) Albert Arturo, (2) Police Officer (PO) 3 Jonathan Coralde, (3) PO2 Reynante Mananghaya, and (4) Senior Police Officer 1 (SPO1) Antonio Asiones.[6] Their testimonies reveal that a Complaint was filed by Brian Resco against Danilo Villanueva for allegedly shooting the former along C-3 Road, Navotas City. After recording the incident in the police blotter, PO3 Jonathan Coralde, SPO3 Enrique de Jesus, SPO2 Henry Martin and SPO1 Anthony Asiones, together with Resco, proceeded to the house of Villanueva. They informed Villanueva about the Complaint lodged against him. They invited him to the police station. There, he was subjected to a body search and, in the process, a plastic sachet of shabu was recovered from the left pocket of his pants. PO3 Coralde marked the sachet with the initial "DAV 06-15-04", and PO2 Reynante Mananghaya brought it to the National Police District Scene of the Crime Operatives (NPD-SOCO) for examination.[7]

DEFENSE'S VERSION

The accused testified that at the time of the incident, he was at home watching TV when PO3 Coralde, along with three others, invited him to go with them to the police station. Informed that he had been identified as responsible for shooting Resco, the accused was then frisked and detained at the police station.[8]

RULING OF THE RTC

The Regional Trial Court (RTC) Branch 127 of Caloocan City, in its Decision[9] dated 6 April 2009, convicted petitioner of the offense charged. The dispositive portion of the Decision reads:

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[5] Id. at 32.
[6] *Rollo*, p. 36.
[7] Id. at 36-37.
[8] Id. at 38.
[9] Records, pp. 165-171; penned by Judge Victoriano B. Cabanos.

> **WHEREFORE**, premises considered, judgment is hereby rendered declaring accused DANILO VILLANUEVA y ALCARAZ, **GUILTY BEYOND REASONABLE DOUBT** of the offense of Violation of Section 11, Article II, R.A. 9165. Henceforth, this Court hereby sentences him to suffer an ***imprisonment of twelve (12) years and one (1) day as the minimum to seventeen (17) years and eight (8) months as the maximum and to pay the fine of Three Hundred Thousand Pesos (P300,000.00).***
>
> The drugs subject matter of this case is ordered confiscated and forfeited in favor of the government to be dealt with in accordance with the law.
>
> **SO ORDERED**.[10]

The CA reviewed the appeal, which hinged on one issue, *viz*:

> THE COURT *A QUO* GRAVELY ERRED IN NOT FINDING AS ILLEGAL THE ACCUSED-APPELLANT'S WARRANTLESS ARREST AND SEARCH.[11]

RULING OF THE CA

On 4 May 2011, the CA affirmed the ruling of the lower court:

> **WHEREFORE**, the appealed Decision dated April 6, 2009 of the Regional Trial Court, Branch 127, Caloocan City in Criminal Case No. 70854 finding the accused-appellant guilty beyond reasonable doubt is hereby **AFFIRMED.**
>
> **SO ORDERED.**[12]

On 27 May 2011, petitioner filed a Motion for Reconsideration,[13] which the CA denied in a Resolution[14] dated 18 October 2011.

Hence, the instant Petition, which revolves around the following lone issue:

> WHETHER THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE PETITIONER'S

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[10] Id. at 171.
[11] *Rollo*, p. 39.
[12] Id. at 51.
[13] Id. at 100-104.
[14] Id. at 53-54.

> CONVICTION FOR VIOLATION OF SECTION 11 OF REPUBLIC ACT NO. 9165 DESPITE THE ILLEGALITY OF THE ARREST AND THE LAPSES ON THE PART OF THE POLICE OFFICERS IN THE HANDLING OF THE CONFISCATED DRUG.[15]

Petitioner claims that his arrest does not fall within the purview of valid warrantless arrests, since it took place on the day of the alleged shooting incident. Hence, to "invite" him to the precinct without any warrant of arrest was illegal. The evidence obtained is, consequently, inadmissible.

The Office of the Solicitor General filed its Comment[16] stating that the shabu confiscated from petitioner was admissible in evidence against him; that the search conducted on him was valid; and that he cannot raise the issue regarding the apprehending officers' non-compliance with Section 21, Article II of R.A. 9165 for the first time on appeal.

OUR RULING

We find the instant appeal meritorious.

Accused-appellant is estopped from questioning the legality of his arrest.

Accused-appellant was arrested without a warrant. Section 5, Rule 113 of the Revised Rules of Criminal Procedure, lays down the basic rules on lawful warrantless arrests either by a peace officer or a private person, as follows:

> Sec. 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.

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[15] Id. at 15.

[16] *Rollo*, pp. 217-248.

The circumstances that transpired between accused-appellant and the arresting officer show none of the above that would make the warrantless arrest lawful. Nevertheless, records reveal that accused-appellant never objected to the irregularity of his arrest before his arraignment. He pleaded not guilty upon arraignment. He actively participated in the trial of the case. Thus, he is considered as one who had properly and voluntarily submitted himself to the jurisdiction of the trial court and waived his right to question the validity of his arrest.[17]

The warrantless search conducted is not among those allowed by law.

A waiver of an illegal arrest, however, is not a waiver of an illegal search.[18] Records have established that both the arrest and the search were made without a warrant. While the accused has already waived his right to contest the legality of his arrest, he is not deemed to have equally waived his right to contest the legality of the search.

Jurisprudence is replete with pronouncements on when a warrantless search can be conducted. These searches include: (1) search of a moving vehicle; (2) seizure in plain view; (3) customs search; (4) waiver or consented search; (5) stop-and-frisk situation; (6) search incidental to a lawful arrest and (7) exigent and emergency circumstance.[19]

The search made was not among the enumerated instances. Certainly, it was not of a moving vehicle, a customs search, or a search incidental to a lawful arrest. There could not have been a seizure in plain view as the seized item was allegedly found inside the left pocket of accused-appellant's pants. Neither was it a stop-and-frisk situation. While this type may seemingly fall under the consented search exception, we reiterate that "[c]onsent to a search is not to be lightly inferred, but shown by clear and convincing evidence."[20]

Consent must also be voluntary in order to validate an otherwise illegal search; that is, the consent must be unequivocal, specific, intelligently given, and uncontaminated by any duress or coercion.[21] In this case, petitioner was merely "ordered" to take out the contents of his pocket. The testimony of the police officer on the matter is clear:

> Q: And what did you do when you frisked a small plastic sachet?
> A: When I felt something inside his pocket, I ordered him to bring out the thing which I felt.

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[17] *People vs. Rabang*, G.R. No. 73403, 23 July 1990, 187 SCRA 682.
[18] *Valdez v. People*, 563 Phil. 934 (2000).
[19] *People v. Racho*, G.R. No. 186529, 3 August 2010, 626 SCRA 633.
[20] *Caballes v. CA*, 424 Phil. 263 (2002).
[21] *Luz v. People*, G.R. No. 197788, 29 February 2012, 667 SCRA 421.

> Q: And what did Danilo Villanueva do when you instructed him to bring out the contents of his pocket?
> A: He took out the contents of his pocket and I saw the plastic containing shabu.[22]

The evidence obtained is not admissible.

Having been obtained through an unlawful search, the seized item is thus inadmissible in evidence against accused-appellant. Obviously, this is an instance of seizure of the "fruit of the poisonous tree." Hence, the confiscated item is inadmissible in evidence consonant with Article III, Section 3(2) of the 1987 Constitution: "Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding."[23] Without the seized item, therefore, the conviction of accused-appellant cannot be sustained. This being the case, we see no more reason to discuss the alleged lapses of the officers in the handling of the confiscated drug.

As a final word, we reiterate that "[w]hile this Court appreciates and encourages the efforts of law enforcers to uphold the law and to preserve the peace and security of society, we nevertheless admonish them to act with deliberate care and within the parameters set by the Constitution and the law. Truly, the end never justifies the means."[24]

WHEREFORE, premises considered, the assailed Decision dated 4 May 2011 and Resolution dated 18 October 2011 issued by the Fourteenth Division of the Court of Appeals in CA-G.R. C.R. No. 32582 are **SET ASIDE**. Petitioner is hereby **ACQUITTED.**

SO ORDERED.

MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

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[22] TSN, 8 November 2004, p. 8.
[23] *People v. Racho,* supra note 15.
[24] *People v. Nuevas*, G.R. No. 170233, 22 February 2007, 516 SCRA 463, 484-485.

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
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