Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

RIZALDY SANCHEZ y CAJILI,
Petitioner,

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

G.R. No. 204589

Present:

CARPIO, *J., Chairperson*,
BRION,
DEL CASTILLO,
MENDOZA, and
LEONEN, *JJ.*

Promulgated:
NOV 19 2014

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DECISION

MENDOZA, *J.*:

This is a petition for *certiorari* under Rule 65 seeking to reverse and set aside the July 25, 2012 Decision[1] and the November 20, 2012 Resolution[2] of the Court of Appeals *(CA),* in CA-G.R. CR No. 31742 filed by petitioner Rizaldy Sanchez y Cajili *(Sanchez),* affirming the April 21, 2005 Decision[3] of the Regional Trial Court of Imus, Cavite, Branch 20 *(RTC),* which convicted him for Violation of Section 11, Article II of Republic Act *(R.A.)* No. 9165. The dispositive portion of the RTC decision reads:

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[1] Penned by Associate Justice Danton Q. Bueser with Associate Justice Amelita G. Tolentino and Associate Justice Ramon R. Garcia, concurring; *rollo* pp. 111-121.
[2] Id. at 141-142.
[3] Penned by Judge Rommel O. Baybay; id. at 44-46.

> WHEREFORE, premises considered, judgment is rendered convicting accused Rizaldy Sanchez y Cajili of Violation of Section 11, Article II of Republic Act No. 9165 and hereby sentences him to suffer imprisonment from twelve (12) to fifteen (15) years and to pay a fine of Php300,000.00.
>
> SO ORDERED.[4]

Sanchez was charged with violation of Section 11, Article II of R.A. No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, in the Information,[5] dated March 20, 2003, filed before the RTC and docketed as Criminal Case No. 10745-03. The accusatory portion of the Information indicting Sanchez reads:

> That on or about the 19th day of March 2003, in the Municipality of Imus, Province of Cavite, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there willfully, unlawfully and feloniously have in his possession, control and custody, 0.1017 gram of Methamphetamine Hydrochloride, commonly known as "shabu," a dangerous drug, in violation of the provisions of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

When arraigned, Sanchez pleaded not guilty to the offense charged. During the pre-trial, the prosecution and the defense stipulated on the existence and due execution of the following pieces of evidence: 1] the request for laboratory examination; 2] certification issued by the National Bureau of Investigation *(NBI);* 3] Dangerous Drugs Report; and 4] transparent plastic sachet containing small transparent plastic sachet of white crystalline substance.[6] Thereafter, trial on the merits ensued.

Version of the Prosecution

The prosecution's version of the events as summarized by the Office of the Solicitor General *(OSG)* in its Comment[7] on the petition is as follows:

> Around 2:50 pm of March 19, 2003, acting on the information that Jacinta Marciano, aka "Intang," was selling drugs to tricycle drivers, SPO1 Elmer Amposta, together with CSU Edmundo Hernandez, CSU Jose Tagle, Jr., and CSU Samuel Monzon, was dispatched to Barangay Alapan 1-B, Imus, Cavite to conduct an operation.

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[4] Id. at 43
[5] Id. at 42-43.
[6] Id. at 44-45.
[7] Id. at 184-193.

> While at the place, the group waited for a tricycle going to, and coming from, the house of Jacinta. After a few minutes, they spotted a tricycle carrying Rizaldy Sanchez coming out of the house. The group chased the tricycle. After catching up with it, they requested Rizaldy to alight. It was then that they noticed Rizaldy holding a match box.
>
> SPO1 Amposta asked Rizaldy if he could see the contents of the match box. Rizaldy agreed. While examining it, SPO1 Amposta found a small transparent plastic sachet which contained a white crystalline substance. Suspecting that the substance was a regulated drug, the group accosted Rizaldy and the tricycle driver. The group brought the two to the police station.
>
> On March 20, 2003, Salud M. Rosales, a forensic chemist from the NBI, submitted a Certification which reads:
>
> > This certifies that on the above date at 9:25 a.m. one PO1 Edgardo Nario of Imus, Mun. PS, PNP, Imus, Cavite submitted to this office for laboratory examinations the following specimen/s to wit:
> >
> > White crystalline substance contained in a small plastic sachet, marked "RSC," placed in a plastic pack, marked "Mar. 19, 2003." (net wt. = 0.1017 gm)...
> >
> > Examinations conducted on the above-mentioned specimen/s gave POSITIVE RESULTS for METHAMPHETAMINE HYDROCHLORIDE.
> >
> > Said specimen/s were allegedly confiscated from RIZALDY SANCHEZ y CAJILI and DARWIN REYES y VILLARENTE.
> >
> > Official report follows:
> >
> > This certification was issued upon request for purpose of filing the case.[8]

Version of the Defense

In the present petition,[9] Sanchez denied the accusation against him and presented a different version of the events that transpired in the afternoon of March 19, 2003, to substantiate his claim of innocence:

> On 24 February 2005, the accused Rizaldy Sanchez took the witness stand. He testified that on the date and time in question, he, together with a certain Darwin Reyes, were on their way home from Brgy. Alapan, Imus, Cavite, where they transported a passenger, when their way was blocked by four (4) armed men riding an owner-type jeepney. Without a word, the four men frisked him and Darwin. He protested and asked what offense did they commit. The

[8] Id. at 184-185.
[9] Id. at 12-39.

> arresting officers told him that they had just bought drugs from Alapan. He reasoned out that he merely transported a passenger there but the policemen still accosted him and he was brought to the Imus Police Station where he was further investigated. The police officer, however, let Darwin Reyes go. On cross-examination, the accused admitted that it was the first time that he saw the police officers at the time he was arrested. He also disclosed that he was previously charged with the same offense before Branch 90 of this court which was already dismissed, and that the police officers who testified in the said case are not the same as those involved in this case.[10]

The Ruling of the RTC

On April 21, 2005, the RTC rendered its decision[11] finding that Sanchez was caught *in flagrante delicto,* in actual possession of shabu. It stated that the police operatives had reasonable ground to believe that Sanchez was in possession of the said dangerous drug and such suspicion was confirmed when the match box Sanchez was carrying was found to contain shabu. The RTC lent credence to the testimony of prosecution witness, SPO1 Elmer Amposta *(SPO1 Amposta)* because there was no showing that he had been impelled by any ill motive to falsely testify against Sanchez. The dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is rendered convicting accused Rizaldy Sanchez y Cajili of Violation of Section 11, Article II of Republic Act No. 9165 and hereby sentences him to suffer imprisonment from twelve (12) to fifteen (15) years and to pay a fine of Php300,000.00.
>
> SO ORDERED.[12]

Unfazed, Sanchez appealed the RTC judgment of conviction before the CA. He faulted the RTC for giving undue weight on the testimony of SPO1 Amposta anchored merely on the presumption of regularity in the performance of duty of the said arresting officer. He insisted that the prosecution evidence was insufficient to establish his guilt.

The Ruling of the CA

The CA found no cogent reason to reverse or modify the findings of facts and conclusions reached by the RTC and, thus, upheld the conviction of the accused for violation of Section 11, Article II of R.A. No. 9165.

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[10] Id. at 17.
[11] Supra note 3.
[12] Id. at 46.

According to the CA, there was probable cause for the police officers to believe that Sanchez was then and there committing a crime considering that he was seen leaving the residence of a notorious drug dealer where, according to a tip they received, illegal drug activities were being perpetrated. It concluded that the confiscation by the police operative of the subject narcotic from Sanchez was pursuant to a valid search. The CA then went on to write that non-compliance by the police officers on the requirements of Section 21, paragraph 1, Article II of R.A. No. 9165, particularly on the conduct of inventory and photograph of the seized drug, was not fatal to the prosecution's cause since its integrity and evidentiary value had been duly preserved. The *fallo* of the decision reads:

> WHEREFORE, the Decision of the Regional Trial Court, Branch 20, Imus, Cavite dated April 21, 2005 and Order dated October 1, 2007 in Criminal Case No. 10745-03 finding accused-appellant Rizaldy C. Sanchez guilty beyond reasonable doubt of violation of Section 11, Article II of Republic Act No. 9165, is AFFIRMED.
>
> SO ORDERED.[13]

Sanchez filed a motion for reconsideration of the July 25, 2012 Decision, but it was denied by the CA in its November 20, 2012 Resolution.

Hence, this petition.

Bewailing his conviction, Sanchez filed the present petition for *"certiorari"* under Rule 65 of the Rules of Court and anchored on the following

GROUNDS:

> **1. THE HONORABLE COURT OF APPEALS, WITH ALL DUE RESPECT, COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION WHEN IT HELD THAT ACCUSED WAS CAUGHT IN FLAGRANTE DELICTO, HENCE, A SEARCH WARRANT WAS NO LONGER NECESSARY; AND**
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> **2. THE HONORABLE COURT OF APPEALS, WITH DUE RESPECT, COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION WHEN IT HELD THAT NON-COMPLIANCE WITH SECTION 21, PARAGRAPH 1, ARTICLE II OF REPUBLIC ACT NO. 9165 DOES NOT AUTOMATICALLY RENDER THE SEIZED ITEMS INADMISSIBLE IN EVIDENCE.**[14]

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[13] Id at 120-121.
[14] Id. at 17.

Sanchez insists on his acquittal. He argues that the warrantless arrest and search on him were invalid due to the absence of probable cause on the part of the police officers to effect an *in flagrante delicto* arrest under Section 15, Rule 113 of the Rules of Court. He also contends that the failure of the police operatives to comply with Section 21, paragraph 1, Article II of R.A. No. 9165 renders the seized item inadmissible in evidence and creates reasonable doubt on his guilt.

By way of Comment[15] to the petition, the OSG prays for the affirmance of the challenged July 25, 2012 decision of the CA. The OSG submits that the warrantless search and seizure of the subject narcotic were justified under the plain view doctrine where a police officer is not searching for evidence against the accused, but nonetheless inadvertently comes across an incriminating object.

The Court's Ruling

Preliminarily, the Court notes that this petition suffers from procedural infirmity. Under Section 1, Rule 45 of the Rules of Court, the proper remedy to question the CA judgment, final order or resolution, as in the present case, is a petition for review on *certiorari*, which would be but a continuation of the appellate process over the original case.[16] By filing a special civil action for certiorari under Rule 65, Sanchez therefore clearly availed himself of the wrong remedy.

Be that as it may, the Court, in several cases before, had treated a petition for *certiorari* as a petition for review under Rule 45, in accordance with the liberal spirit and in the interest of substantial justice, particularly (1) if the petition was filed within the reglementary period for filing a petition for review; (2) errors of judgment are averred; and (3) there is sufficient reason to justify the relaxation of the rules.[17] The case at bench satisfies all the above requisites and, hence, there is ample justification to treat this petition for *certiorari* as a petition for review. Besides, it is axiomatic that the nature of an action is determined by the allegations of the complaint or petition and the character of the relief sought.[18] Here, stripped of allegations of "grave abuse of discretion," the petition actually avers errors of judgment rather than of jurisdiction, which are the appropriate subjects of a petition for review on *certiorari.*

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[15] Id. at 184-192.
[16] *Heirs of Pagobo v. Court of Appeals*, 345 Phil. 1119, 1133 (1997).
[17] *Oaminal v. Castillo*, 459 Phil. 542, 556 (2003); *Tagle v. Equitable PCI Bank*, 575 Phil. 384, 4032008).
[18] *Ten Forty Realty and Development Corporation v. Cruz*, 457 Phil. 603, 613 (2003).

Going now into the substance of the petition, the Court finds the same to be impressed with merit.

Although it is true that the trial court's evaluation of the credibility of witnesses and their testimonies is entitled to great respect and not to be disturbed on appeal, this rule, however, is not a hard and fast one. It is a time-honored rule that the assessment of the trial court with regard to the credibility of witnesses deserves the utmost respect, if not finality, for the reason that the trial judge has the prerogative, denied to appellate judges, of observing the demeanor of the declarants in the course of their testimonies. But an exception exists if there is a showing that the trial judge overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance that would have affected the case.[19] After going over the records of the case at bench, the Court finds some facts of weight and substance that have been overlooked, misapprehended, or misapplied by the trial court which cast doubt on the guilt of Sanchez.

In sustaining the conviction of Sanchez, the CA ratiocinated that this was a clear case of an *in flagrante delicto* arrest under paragraph (a) Section 5, Rule 113 of the Rules on Criminal Procedure. In this regard, the CA wrote:

> In the case at Bar, the acquisition of the regulated drug by the police officers qualifies as a valid search following a lawful operation by the police officers. The law enforcers acted on the directive of their superior based on an information that the owner of the residence where Sanchez came from was a notorious drug dealer. As Sanchez was seen leaving the said residence, the law enforcers had probable cause to stop Sanchez on the road since there was already a tip that illegal drug-related activities were perpetrated in the place where he came from and seeing a match box held on one hand, the police officers' action were justified to inspect the same. The search therefore, is a sound basis for the lawful seizure of the confiscated drug, arrest and conviction of Sanchez.
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> The case of *People vs. Valdez* (G.R. No. 127801, March 3, 1999) is instructive. In that case, the police officers, by virtue of an information that a person having been previously described by the informant, accosted Valdez and upon inspection of the bag he was carrying, the police officers found the information given to them to be true as it yielded *marijuana* leaves hidden in the water jug and lunch box inside Valdez's bag. The Supreme Court in affirming the trial court's ruling convicting Valdez declared that:

[19] *People v. Alvarado*, 429 Phil. 208, 219 (2002).

> In this case, appellant was caught *in flagrante* since he was carrying *marijuana* at the time of his arrest. A crime was actually being committed by the appellant, thus, the search made upon his personal effects falls squarely under paragraph (a) of the foregoing provisions of law, which allow a warrantless search incident to lawful arrest. While it is true that SPO1 Mariano was not armed with a search warrant when the search was conducted over the personal effects of appellant, nevertheless, under the circumstances of the case, there was sufficient probable cause for said police officer to believe that appellant was then and there committing a crime.
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> The cited case is akin to the circumstances in the instant appeal as in this case, Sanchez, coming from the house of the identified drug dealer, previously tipped by a concerned citizen, walked to a parked tricycle and sped towards the direction of Kawit, Cavite. The search that gave way to the seizure of the match box containing shabu was a reasonable course of event that led to the valid warrantless arrest since there was sufficient probable cause for chasing the tricycle he was in. (Underscoring supplied)

A judicious examination of the evidence on record belies the findings and conclusions of the RTC and the CA.

At the outset, it is observed that the CA confused the search incidental to a lawful arrest with the stop-and-frisk principle, a well-recognized exception to the warrant requirement. Albeit it did not expressly state so, the CA labored under the confused view that one and the other were indistinct and identical. That confused view guided the CA to wrongly affirm the petitioner's conviction. The Court must clear this confusion and correct the error.

It is necessary to remind the RTC and the CA that the *Terry*[20] stop-and-frisk search is entirely different from and should not be confused with the search incidental to a lawful arrest envisioned under Section 13, Rule 126 of the Rules on Criminal Procedure. The distinctions have been made clear in *Malacat v. Court of Appeals*[21]:

> In a search incidental to a lawful arrest, as the precedent arrest determines the validity of the incidental search, the legality of the arrest is questioned in a large majority of these cases, e.g., whether an arrest was merely used as a pretext for conducting a search. In this instance, the law requires that there first be a lawful arrest before a search can be made -- the process cannot be reversed. At bottom, assuming a valid arrest, the arresting officer may search the person of the arrestee and the area within which the latter may reach for a weapon or for evidence to destroy, and seize

[20] *Terry v. Ohio*, 392 US 1, 88 S. Ct. 1868, 20 L. Ed. 889.
[21] 347 Phil. 462 (1997).

> any money or property found which was used in the commission of the crime, or the fruit of the crime, or that which may be used as evidence, or which might furnish the arrestee with the means of escaping or committing violence.
>
> x x x x
>
> We now proceed to the justification for and allowable scope of a "stop-and-frisk" as a "limited protective search of outer clothing for weapons," as laid down in Terry, thus:
>
> We merely hold today that where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him. Such a search is a reasonable search under the Fourth Amendment x x x x.
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> Other notable points of Terry are that while probable cause is not required to conduct a "stop-and-frisk," it nevertheless holds that mere suspicion or a hunch will not validate a "stop-and-frisk." A genuine reason must exist, in light of the police officer's experience and surrounding conditions, to warrant the belief that the person detained has weapons concealed about him. Finally, a "stop-and-frisk" serves a two-fold interest: (1) the general interest of effective crime prevention and detection, which underlies the recognition that a police officer may, under appropriate circumstances and in an appropriate manner, approach a person for purposes of investigating possible criminal behavior even without probable cause; and (2) the more pressing interest of safety and self-preservation which permit the police officer to take steps to assure himself that the person with whom he deals is not armed with a deadly weapon that could unexpectedly and fatally be used against the police officer.[22]

In the case at bench, neither the *in flagrante delicto* arrest nor the stop- and-frisk principle was applicable to justify the warrantless search and seizure made by the police operatives on Sanchez. An assiduous scrutiny of the factual backdrop of this case shows that the search and seizure on Sanchez was unlawful. A portion of SPO1 Amposta's testimony on direct examination is revelatory, viz:

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[22] Id. at 480-482.

Pros. Villarin:

Q: On March 19, 2003 at around 2:50 p.m., can you recall where were you?
A: Yes, Mam.

Q: Where were you?
A: We were in Brgy. Alapan 1-B, Imus, Cavite.

Q: What were you doing at Alapan 1-B, Imus, Cavite?
A: We were conducting an operation against illegal drugs.

Q: Who were with you?
A: CSU Edmundo Hernandez, CSU Jose Tagle, Jr. and CSU Samuel Monzon.

Q: Was the operation upon the instruction of your Superior?
A: Our superior gave us the information that there were tricycle drivers buying drugs from "Intang" or Jacinta Marciano.

Q: What did you do after that?
A: We waited for a tricycle who will go to the house of Jacinta Marciano.

Q: After that what did you do?
A: A tricycle with a passenger went to the house of "Intang" and when the passenger boarded the tricycle, we chase[d] them.

Q: After that, what happened next?
A: When we were able to catch the tricycle, the tricycle driver and the passenger alighted from the tricycle.

Q: What did you do after they alighted from the tricycle?
A: I saw the passenger holding a match box.

Q: What did you do after you saw the passenger holding a match box?
A: I asked him if I can see the contents of the match box.

Q: Did he allow you?
A: Yes, mam. He handed to me voluntarily the match box.

Court:

Q: Who, the driver or the passenger?
A: The passenger, sir.

Pros. Villarin:

Q: After that what did you find out?
A: I opened the match box and I found out that it contained a small transparent plastic sachet containing white crystalline substance.[23]

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[23] TSN dated August 4, 2003, pp. 3-6.

A search as an incident to a lawful arrest is sanctioned by the Rules of Court.[24] It bears emphasis that the law requires that *the search be incidental to a lawful arrest*. Therefore it is beyond cavil that a lawful arrest must precede the search of a person and his belongings; the process cannot be reversed.[25]

Here, the search preceded the arrest of Sanchez. There was no arrest prior to the conduct of the search. Arrest is defined under Section 1, Rule 113 of the Rules of Court as the taking of a person into custody that he may be bound to answer for the commission of an offense. Under Section 2, of the same rule, an arrest is effected by an actual restraint of the person to be arrested or by his voluntary submission to the custody of the person making the arrest.[26]

Even casting aside the petitioner's version and basing the resolution of this case on the general thrust of the prosecution evidence, no arrest was effected by the police operatives upon the person of Sanchez before conducting the search on him. It appears from the above quoted testimony of SPO1 Amposta that after they caught up with the tricycle, its driver and the passenger, Sanchez, alighted from it; that he noticed Sanchez holding a match box; and that he requested Sanchez if he could see the contentsof the match box, to which the petitioner acceded and handed it over to him. The arrest of Sanchez was made only after the discovery by SPO1 Amposta of the shabu inside the match box. Evidently, what happened in this case was that a search was first undertaken and then later an arrest was effected based on the evidence produced by the search.

Even granting arguendo that Sanchez was arrested before the search, still the warrantless search and seizure must be struck down as illegal because the warrantless arrest was unlawful. Section 5, Rule 113 of the 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 actuallly committing, or is attempting to commit an offense;

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[24] Rule 126, Sec. 13, provides:
SEC. 13. *Search incidental to a lawful arrest.*-A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant.
[25] *People v. Nuevas*, 545 Phil. 356, 371 (2007).
[26] *People v. Milado,* 462 Phil. 411, 416 (2003).

> (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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> x x x

For warrantless arrest under paragraph (a) of Section 5 (*in flagrante delicto* arrest) to operate, two elements must concur: (1) 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 (2) such overt act is done in the presence or within the view of the arresting officer.[27] On the other hand, paragraph (b) of Section 5 (arrest effected in hot pursuit) requires for its application that at the time of the arrest, an offense has in fact just been committed and the arresting officer has personal knowledge of facts indicating that the person to be apprehended has committed it. These elements would be lacking in the case at bench.

The evidence on record reveals that no overt physical act could be properly attributed to Sanchez as to rouse suspicion in the minds of the police operatives that he had just committed, was committing, or was about to commit a crime. Sanchez was merely seen by the police operatives leaving the residence of a known drug peddler, and boarding a tricycle that proceeded towards the direction of Kawit, Cavite. Such acts cannot in any way be considered criminal acts. In fact, even if Sanchez had exhibited unusual or strange acts, or at the very least appeared suspicious, the same would not have been considered overt acts in order for the police officers to effect a lawful warrantless arrest under paragraph (a) of Section 5, Rule 113.

It has not been established either that the rigorous conditions set forth in paragraph (b) of Section 5 have been complied with in this warrantless arrest. When the police officers chased the tricycle, they had no personal knowledge to believe that Sanchez bought shabu from the notorious drug dealer and actually possessed the illegal drug when he boarded the tricycle. Probable cause has been held to signify a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man's belief that the person accused is guilty of the offense with which he is charged.[28] The police officers in this case had no inkling whatsoever as to what Sanchez did inside the house of the known drug

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[27] *Zalameda v. People*, 614 Phil. 710, 729 (2009).
[28] *People v. Villareal*, G.R. No. 201363, March 18, 2013, 693 SCRA 549, 560-561.

dealer. Besides, nowhere in the prosecution evidence does it show that the drug dealer was conducting her nefarious drug activities inside her house so as to warrant the police officers to draw a reasonable suspicion that Sanchez must have gotten shabu from her and possessed the illegal drug when he came out of the house. In other words, there was no overt manifestation on the part of Sanchez that he had just engaged in, was actually engaging in or was attempting to engage in the criminal activity of illegal possession of shabu. Verily, probable cause in this case was more imagined than real.

In the same vein, there could be no valid "stop-and-frisk" search in the case at bench. Elucidating on what constitutes "stop-and-frisk" operation and how it is to be carried out, the Court in *People v. Chua*[29] wrote:

> A stop and frisk was defined as the act of a police officer to stop a citizen on the street, interrogate him, and pat him for weapon(s) or contraband. The police officer should properly introduce himself and make initial inquiries, approach and restrain a person who manifests unusual and suspicious conduct, in order to check the latter's outer clothing for possibly concealed weapons. The apprehending police officer must have a genuine reason, in accordance with the police officer's experience and the surrounding conditions, to warrant the belief that the person to be held has weapons (or contraband) concealed about him. It should therefore be emphasized that a search and seizure should precede the arrest for this principle to apply.[30]

In this jurisdiction, what may be regarded as a genuine reason or a reasonable suspicion justifying a *Terry* stop-and-frisk search had been sufficiently illustrated in two cases. In *Manalili v. Court of Appeals and People*,[31] a policeman chanced upon Manalili in front of the cemetery who appeared to be "high" on drugs as he was observed to have reddish eyes and to be walking in a swaying manner. Moreover, he appeared to be trying to avoid the policemen and when approached and asked what he was holding in his hands, he tried to resist. When he showed his wallet, it contained marijuana. The Court held that the policeman had sufficient reason to accost Manalili to determine if he was actually "high" on drugs due to his suspicious actuations, coupled with the fact that the area was a haven for drug addicts.

In *People v. Solayao*,[32] the Court also found justifiable reason for the police to stop and frisk the accused after considering the following circumstances: the drunken actuations of the accused and his companions; the fact that his companions fled when they saw the policemen; and the fact

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[29] 444 Phil. 757 (2003).
[30] Id. at 773-774.
[31] 345 Phil. 632 (1997).
[32] 330 Phil. 811 (1996).

that the peace officers were precisely on an intelligence mission to verify reports that armed persons where roaming the vicinity. Seemingly, the common thread of these examples is the presence of more than one seemingly innocent activity, which, taken together, warranted a reasonable inference of criminal activity. It was not so in the case at bench.

The Court does not find the totality of the circumstances described by SPO1 Amposta as sufficient to incite a reasonable suspicion that would justify a stop-and-frisk search on Sanchez. Coming out from the house of a drug pusher and boarding a tricycle, without more, were innocuous movements, and by themselves alone could not give rise in the mind of an experienced and prudent police officer of any belief that he had shabu in his possession, or that he was probably committing a crime in the presence of the officer. There was even no allegation that Sanchez left the house of the drug dealer in haste or that he acted in any other suspicious manner. There was no showing either that he tried to evade or outmaneuver his pursuers or that he attempted to flee when the police officers approached him. Truly, his acts and the surrounding circumstances could not have engendered any reasonable suspicion on the part of the police officers that a criminal activity had taken place or was afoot.

In the recent case of *People v. Cogaed*,[33] where not a single suspicious circumstance preceded the search on the accused, the Court ruled that the questioned act of the police officer did not constitute a valid stop-and-frisk operation. Cogaed was a mere passenger carrying a blue bag and a sack and travelling aboard a jeepney. He did not exhibit any unusual or suspicious behavior sufficient to justify the law enforcer in believing that he was engaged in a criminal activity. Worse, the assessment of suspicion was made not by the police officer but by the jeepney driver, who signaled to the police officer that Cogaed was "suspicious." In view of the illegality of the search and seizure, the 12,337.6 grams of marijuana confiscated from the accused was held as inadmissible.

The OSG characterizes the seizure of the subject shabu from Sanchez as seizure of evidence in plain view. The Court disagrees.

Under the plain view doctrine, objects falling in the plain view of an officer who has a right to be in the position to have that view are subject to seizure and may be presented as evidence.[34] The plain view doctrine applies when the following requisites concur: (1) the law enforcement officer in search of the evidence has a prior justification for an intrusion or is in a position from which he can view a particular area; (2) the discovery of the

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[33] G.R. No. 200334, July 30, 2014.
[34] *People v. Go*, 457 Phil. 885, 928 (2003).

evidence in plain view is inadvertent; and (3) it is immediately apparent to the officer that the item he observes may be evidence of a crime, contraband or otherwise subject to seizure.[35]

Measured against the foregoing standards, it is readily apparent that the seizure of the subject shabu does not fall within the plain view exception. First, there was no valid intrusion. As already discussed, Sanchez was illegally arrested. Second, subject shabu was not inadvertently discovered, and third, it was not plainly exposed to sight. Here, the subject shabu was allegedly inside a match box being then held by Sanchez and was not readily apparent or transparent to the police officers. In fact, SPO1 Amposta had to demand from Sanchez the possession of the match box in order for him to open it and examine its content. The shabu was not in plain view and its seizure without the requisite search warrant is in violation of the law and the Constitution.

In the light of the foregoing, there being no lawful warrantless arrest and warrantless search and seizure, the shabu purportedly seized from Sanchez is inadmissible in evidence for being the proverbial fruit of the poisonous tree. As the confiscated shabu is the very *corpus delicti* of the crime charged, the accused must be acquitted and exonerated from the criminal charge of violation of Section 11, Article II of R.A. No. 9165.

Furthermore, the Court entertains doubts whether the shabu allegedly seized from Sanchez was the very same item presented during the trial of this case. The Court notes that there were several lapses in the law enforcers' handling of the seized item which, when taken collectively, render the standards of chain of custody seriously breached.

Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction.[36] The function of the chain of custody requirement is to ensure that the integrity and evidentiary value of the seized items are preserved, so much so that unnecessary doubts as to the identity of the evidence are removed.[37] Thus, the chain of custody requirement has a two-fold purpose: (1) the preservation of the integrity and evidentiary value of the seized items, and (2) the removal of unnecessary doubts as to the identity of the evidence.[38]

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[35] *Judge Abelita III v. P/Supt. Doria*, 612 Phil. 1127, 1135-1136.
[36] *People v. Guzon*, G.R. No. 199901, October 9, 2013, 707 SCRA 384, 396.
[37] *People v. Langcua*, G.R. No. 190343, February 6, 2013, 690 SCRA 123, 139.
[38] *People v. Morate*, G.R. No. 201156, January 29, 2014.

In this case, the prosecution failed to account for each and every link in the chain of custody of the shabu, from the moment it was allegedly confiscated up to the time it was presented before the court as proof of the *corpus delicti*. The testimony of SPO1 Amposta was limited to the fact that he placed the marking "RSC" on the seized drug; and that he and the three other police officers brought Sanchez and the subject shabu to their station and turned them over to their investigator. The prosecution evidence did not disclose where the marking of the confiscated shabu took place and who witnessed it. The evidence does not show who was in possession of the seized shabu from the crime scene to the police station. A reading of the Certification, dated March 20, 2003, issued by Forensic Chemist Salud Rosales shows that a certain PO1 Edgardo Nario submitted the specimen to the NBI for laboratory examination, but this piece of evidence does not establish the identity of the police investigator to whom SPO1 Amposta and his group turned over the seized shabu. The identities of the person who received the specimen at the NBI laboratory and the person who had the custody and safekeeping of the seized marijuana after it was chemically analyzed pending its presentation in court were also not disclosed.

Given the procedural lapses pointed out above, a serious uncertainty hangs over the identity of the seized shabu that the prosecution introduced in evidence. The prosecution failed to establish an unbroken chain of custody, resulting in rendering the seizure and confiscation of the shabu open to doubt and suspicion. Hence, the incriminatory evidence cannot pass judicial scrutiny.

WHEREFORE, the petition is **GRANTED**. The assailed July 25, 2012 Decision and the November 20, 2012 Resolution of the Court of Appeals in CA-G.R. CR No. 31742 are **REVERSED** and **SET ASIDE**. Petitioner Rizaldy Sanchez y Cajili is **ACQUITTED** on reasonable doubt. Accordingly, the Court orders the immediate release of the petitioner, unless the latter is being lawfully held for another cause; and to inform the Court of the date of his release, or reason for his continued confinement, within ten (10) days from receipt of notice.

SO ORDERED.

JOSE CATRAL MENDOZA
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

ARTURO D. BRION
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

MARVIC M.V.F. LEONEN
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.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

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

MARIA LOURDES P. A. SERENO
Chief Justice