



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

IAN AGRAVANTE y DE OCA,
Petitioner,

G.R. No. 257450

Present:

CAGUIOA, J., *Chairperson,*
INTING,
GAERLAN,
DIMAAMPAO, and
SINGH, JJ.

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:

July 11, 2022

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DECISION

DIMAAMPAO, J.:

Impugned in this Petition for Review on *Certiorari*¹ are the *Decision*² dated 8 September 2020 and the *Resolution*³ dated 27 May 2021 of the Court of Appeals (CA) in CA-G.R. CEB-CR No. 03144, which affirmed the *Decision*⁴ dated 28 September 2017 of the Regional Trial Court (RTC) of Bacolod City, Negros Occidental, Branch 44, in Criminal Case No. 12-36714, and denied the Motion for Reconsideration⁵ thereof, respectively.

The instant case has its provenance in an Information⁶ charging petitioner Ian Agravante y De Oca with illegal possession of firearm and

¹ *Rollo*, pp. 10-33.

² *Id.* at 86-103. Penned by Associate Justice Emily R. Aliño-Geluz, with Associate Justices Gabriel T. Ingles and Lorenza Redulla Bordios, concurring.

³ *Id.* at 112-114. Penned by Associate Justice Gabriel T. Ingles, with Associate Justices Pamela Ann Abella Maxino and Lorenza Redulla Bordios, concurring.

⁴ *Id.* at 56-64. Penned by Presiding Judge Ana Celeste P. Bernad.

⁵ *Id.* at 104-110.

⁶ See *id.* at 56 and 57.

ammunition, defined and penalized under Presidential Decree (PD) No. 1866,⁷ as amended, the accusatory averments of which read:

That on or about the 14th day of July 2012, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein [petitioner], did, then and there willfully, unlawfully and feloniously have in his possession, custody and control and carry outside of his residence one (1) Improvised Homemade Firearm containing a cal. 357 live ammunition being chambered at the barrel, two (2) cal. 357 live ammunitions and one (1) .12 gauge live ammunition without a permit and/or authority duly and legally issued for that purpose, in violation of the aforementioned law.

Act contrary to law.

The prosecution averred that at around 3:10 a.m. of 14 July 2012, the Philippine National Police Mobile Patrol Group (PNP-MPG) received a call from a certain Engineer Vicente Genova (Genova) that several items were stolen from his vehicle parked along San Juan-Burgos, *Barangay* 10, Bacolod City. The items alleged to have been stolen were a black firearm case containing a .40 caliber *P99 Walther* pistol with serial number FAH8290; two magazines containing 16 pieces of live ammunition; several other live ammunitions; a *Nike* bag; and another bag. After recording the incident in the police blotter, PO1 Edward M. Teodorico (PO1 Teodorico) and his team gathered information in the area where the crime took place. In the course thereof, they interviewed Romeo Tabigne (Tabigne), who claimed that he witnessed the incident and named Rainhart Colangco, a certain *Balweg*, and petitioner as the perpetrators thereof.⁸

Around two o'clock in the afternoon of that fateful day, Tabigne led a team of police officers, including PO1 Teodorico, to a house at *Purok* Kagaykay, *Barangay* 2, Bacolod City, where petitioner and his companions were purportedly staying. PO1 Teodorico peered inside the house through the spaces between the bamboo slats of the window and saw petitioner sleeping inside. They then entered the house and found two bags beside him, one of which was the *Nike* bag similar to that described by Genova as stolen from his vehicle. Upon opening the other bag, they discovered that it contained two pieces of .357 live ammunition and an improvised gun containing a live ammunition. When petitioner was frisked, a live ammunition for a shotgun was recovered from his pocket. Moreover, they also retrieved from the *Nike* bag a magazine of a *P99 Walther* pistol and 27 pieces of .40 calibre live ammunition. PO1 Teodorico marked the improvised gun, the live ammunition chambered in its barrel, the two pieces of .357 live ammunition, and the live ammunition recovered from petitioner's pocket, while the rest of the items were returned to Genova. Petitioner was arrested when he failed to show any

⁷ CODIFYING THE LAWS ON ILLEGAL/UNLAWFUL POSSESSION, MANUFACTURE, DEALING IN, ACQUISITION OR DISPOSITION, OF FIREARMS, AMMUNITION OR EXPLOSIVES OR INSTRUMENTS USED IN THE MANUFACTURE OF FIREARMS, AMMUNITION OR EXPLOSIVES, AND IMPOSING STIFFER PENALTIES FOR CERTAIN VIOLATIONS THEREOF AND FOR RELEVANT PURPOSES, approved on 29 June 1983.

⁸ *Rollo*, pp. 87-88.

license or authority to possess the seized firearms and ammunitions.⁹

In his defense, petitioner denied the charges against him. He avowed that he was a resident of *Barangay Concepcion*, Talisay City, Negros Occidental and was merely exploring the plaza of Bacolod City, when he met his friend Tabigne, who led him to the house of a certain “*Bek-bek*.” Tabigne eventually left petitioner alone with “*Bek-bek*”, to fetch his cellular phone. Since some time had passed, “*Bek-bek*” went outside to look for him. Petitioner then fell asleep and was awakened when three people entered the house. They pulled his shirt and punched him, while one of the intruders – later identified as PO1 Teodorico – showed him an improvised firearm and asked him about a .45 caliber firearm. Upon petitioner’s denial of any knowledge thereof, he was brought to the police station where he was again allegedly mauled.¹⁰ Petitioner added further that someone had hit him on the back with a gun.¹¹ Admittedly, however, petitioner had no open wounds and was unable to see a doctor regarding his injuries. Also, he did not file any case or complaint against the three police officers.¹²

On 28 September 2017, the RTC rendered a Decision finding petitioner guilty beyond reasonable doubt of violation of illegal possession of firearm and ammunition, defined and penalized under Section 1, Paragraph 2 of PD No. 1866, as amended by Republic Act (RA) No. 8294,¹³ and accordingly sentenced him to suffer the penalty of indeterminate imprisonment of four (4) years, two (2) months, and one (1) day of *prision correccional*, as minimum, to six (6) years, eight (8) months, and one (1) day of *prision mayor*, as maximum, and to pay a fine of ₱30,000.00. The RTC held that the prosecution was able to prove all the elements of the crime charged, considering that petitioner was found in possession of an improvised firearm and ammunitions without the proper permit therefor. It brushed aside petitioner’s defense of denial in light of the positive testimony given by PO1 Teodorico as to the circumstances leading to the discovery of the seized items.¹⁴

Aggrieved, petitioner appealed to the CA.

In the challenged *Decision*,¹⁵ the CA affirmed petitioner’s conviction *in toto*. It found that petitioner was validly arrested without a warrant under Section 5(b), Rule 113 of the Revised Rules on Criminal Procedure and upheld

⁹ Id. at 89.

¹⁰ Id. at 90.

¹¹ Id. at 61-62.

¹² Id. at 62.

¹³ AN ACT AMENDING THE PROVISIONS OF PRESIDENTIAL DECREE NO. 1866, AS AMENDED, ENTITLED ‘CODIFYING THE LAWS ON ILLEGAL/UNLAWFUL POSSESSION, MANUFACTURE, DEALING IN, ACQUISITION OR DISPOSITION OF FIREARMS, AMMUNITION OR EXPLOSIVES OR INSTRUMENTS USED IN THE MANUFACTURE OF FIREARMS, AMMUNITION OR EXPLOSIVES, AND IMPOSING STIFFER PENALTIES FOR CERTAIN VIOLATIONS THEREOF AND FOR RELEVANT PURPOSES, approved on 6 June 1997.

¹⁴ *Rollo*, pp. 62-63.

¹⁵ *Supra* note 2.

the subsequent search pursuant to Section 13, Rule 126 thereof. The CA adjudged that petitioner's failure to assail the legality of his arrest before his arraignment or move for the quashal of the Information is tantamount to a waiver thereof. It likewise sustained the RTC's finding that the prosecution successfully established all the elements of the crime charged.¹⁶

With the denial of petitioner's Motion for Reconsideration¹⁷ in the assailed *Resolution*,¹⁸ he comes now to this Court *via* the present Petition raising the following errors:

I

THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE CONVICTION OF PETITIONER DESPITE THE ILLEGALITY OF HIS ARREST AND THE INADMISSIBILITY OF THE SEIZED FIREARM AND AMMUNITION.

II

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN CONVICTING PETITIONER DESPITE THE INSUFFICIENCY OF THE PROSECUTION'S EVIDENCE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.¹⁹

Simply put, the *lis mota* of this Petition revolves around the propriety of petitioner's conviction for illegal possession of firearm and ammunition.

After a sedulous review of the case, the Court finds merit in the Petition.

At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review and, thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.²⁰ 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.²¹

Guided by the foregoing jurisprudential touchstones, and as will be explained hereunder, the Court finds and so holds that the acquittal of petitioner for the crime charged is in order.

Section 2, 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

¹⁶ Id. at 94-102.

¹⁷ Supra note 5.

¹⁸ Supra note 3.

¹⁹ Id. at 18.

²⁰ See *People vs. Omar*, G.R. No. 238870, 6 October 2021.

²¹ *People vs. Comboy*, 782 Phil. 187, 196 (2016).



and seizure become “unreasonable” within the meaning of said constitutional provision. To protect the people from unreasonable searches and seizures, Section 3(2), 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.²² In other words, evidence obtained from unreasonable searches and seizures shall be inadmissible in evidence for any purpose in any proceeding.²³

One of the recognized exceptions to the need of 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 before a search can be made — the process cannot be reversed.²⁴

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

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.

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.

Under the foregoing provision, there are three (3) instances when warrantless arrests may be lawfully effected. These are: (a) an arrest of a suspect *in flagrante delicto*; (b) an arrest of a suspect where, based on personal knowledge of the arresting officer, there is probable cause that said suspect was the perpetrator of a crime which had just been committed, also known as a “hot pursuit” arrest; 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

²² *People vs. Acosta*, G.R. No. 238865, 28 January 2019, 891 SCRA 397, 404.

²³ See *People vs. Manago y Acut*, 793 Phil. 505, 515 (2016). Emphasis omitted.

²⁴ *Sindac vs. People*, 794 Phil. 421, 428 (2016).

another.²⁵

In warrantless arrests made pursuant to Section 5(b) of Rule 113, the following elements must be established: (a) an offense has just been committed; and (b) the arresting officer has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it. Moreover, there must be no appreciable lapse of time between the arrest and the commission of the crime.²⁶

Appositely, “personal knowledge,” in the context of warrantless arrests, covers either facts or circumstances. Circumstances may pertain to events or actions within the actual perception, personal evaluation, or observation of the police officer at the scene of the crime. Thus, even though the police officer did not see someone actually fleeing, he could still make a warrantless arrest if, based on his personal evaluation of the circumstances at the scene of the crime, he could determine the existence of probable cause that the person sought to be arrested has committed the crime.²⁷ In this regard, the Court has held that neither an anonymous report of a suspicious person nor a hearsay tip operate to vest personal knowledge on the police officers about the commission of an offense.²⁸ As such, a hearsay tip by itself does not justify a warrantless arrest as law enforcers must have personal knowledge of facts, based on their observation, that the person sought to be arrested has just committed a crime.²⁹

It is doctrinal that in warrantless arrests made pursuant to Section 5 (b) of Rule 113, the element of personal knowledge must be coupled with the element of immediacy:

...However, the determination of probable cause and the gathering of facts or circumstances should be made immediately after the commission of the crime in order to comply with the element of immediacy.

In other words, the clincher in the element of “personal knowledge of facts or circumstances” is the required element of immediacy within which these facts or circumstances should be gathered. This required time element acts as a safeguard to ensure that the police officers have gathered the facts or perceived the circumstances within a very limited time frame. This guarantees that the police officers would have no time to base their probable cause finding on facts or circumstances obtained after an exhaustive investigation.

The reason for the element of the immediacy is this — as the time gap from the commission of the crime to the arrest widens, the pieces of information gathered are prone to become contaminated and subjected to

²⁵ See *id.* at 596.

²⁶ See *People vs. Pangcatan y Dimao*, G.R. No. 245921, 5 October 2020.

²⁷ *Supra* note 21 at 516-517.

²⁸ See *Porteria vs. People*, G.R. No. 233777, 20 March 2019, 898 SCRA 106, 122; and *Veridiano vs. People*, 810 Phil. 642 (2017).

²⁹ See *Veridiano vs. People*, 810 Phil. 642, 662 (2017).



external factors, interpretations and hearsay. On the other hand, with the element of immediacy imposed under Section 5 (b), Rule 113 of the Revised Rules of Criminal Procedure, the police officer's determination of probable cause would necessarily be limited to raw or uncontaminated facts or circumstances, gathered as they were within a very limited period of time. The same provision adds another safeguard with the requirement of probable cause as the standard for evaluating these facts of circumstances before the police officer could effect a valid warrantless arrest.³⁰

In light of the foregoing, it is essential that the element of personal knowledge is attended by the element of immediacy; otherwise, the arrest may be nullified, and resultantly, the items yielded through the search incidental thereto will be rendered inadmissible in consonance with the exclusionary rule of the 1987 Constitution.³¹

In the case at bench, the facts tellingly reveal that the PNP-MPG was informed of the incident as early as 3:10 a.m. of 14 July 2012. After recording the incident in the police blotter, PO1 Teodorico and his team proceeded to the scene of the crime to conduct an investigation and interview the people frequenting the area. In the course of their investigation, they learned from Tabigne that: (1) he witnessed petitioner committing the crime; and (2) petitioner was staying in a house located at *Purok Kagaykay, Barangay 2, Bacolod City*. At two o'clock in the afternoon of that same day, more than 11 hours after the crime was reported to them, the police officers proceeded to the house Tabigne brought them to and saw petitioner sleeping inside. Their subsequent entry to the house led to the discovery that petitioner was sleeping beside two bags, including one similar to the description provided by Genova. The police officers searched the bags, the contents of which were several firearms and ammunitions. Petitioner's failure to present any license or authority to possess these items eventuated to his arrest.³²

The foregoing circumstances distinctly demonstrate that petitioner's arrest, contrary to the findings of the CA, failed to meet the required elements of a valid warrantless arrest under Sec. 5 (b) of Rule 113 as *one*, the police officers did not have personal knowledge of any fact or circumstance indicating that petitioner had just committed an offense; and *two*, petitioner's warrantless arrest was not attended by the element of immediacy.

The Court will endeavor to elucidate such disquisition.

First. The police officers effected petitioner's arrest without any personal knowledge of the facts or circumstances showing that he committed the offense. The tip provided by Tabigne regarding petitioner's alleged participation in the crime did not vest the police officers with the personal knowledge necessary to validate a warrantless arrest. Even the narration of the

³⁰ Supra note 25. Emphases and underscoring omitted.

³¹ Id. at 518 and 521.

³² *Rollo*, pp. 87-89.

circumstances leading up to his arrest revealed that the police officers did not see petitioner in possession of the stolen items, as it was only his body that they saw when they peered inside the house. As such, without the tipped information, the police officers would not have known of petitioner's alleged involvement in the reported incident. It must be remembered that warrantless arrests are mere exceptions to the constitutional right of a person against unreasonable searches and seizures, thus, they must be strictly construed against the government and its agents.³³

The Court discerns that the circumstances surrounding petitioner's warrantless arrest are similar to that of the cases of *People vs. Martinez y Angeles*³⁴ and *People vs. Bolasa*,³⁵ as the police officers therein entered a house without a warrant to effect an arrest and search based solely on an informer's tip. The Court, in both cases, ruled that the warrantless arrests of the accused and accompanying searches were illegal due to the absence of sufficient probable cause and lack of personal knowledge to validate the same.³⁶

Second. The required element of immediacy is clearly wanting. By the time the police officers effected the warrantless arrest upon petitioner's person, investigation and verification proceedings were already conducted and the police officers acquired sufficient information on the suspects of theft. As the Court sees it, such information would have been enough for them to secure the necessary warrants against the suspects. Instead, notwithstanding the possession of such information and the passing of 11 hours from the report of the crime, the police officers opted to conduct a "hot pursuit" operation that, unfortunately, failed to meet the legal requirements therefor. There being no valid warrantless arrest under Sec. 5 (b) of Rule 113, the CA committed reversible error in ruling that petitioner was lawfully arrested.

As a consequence of petitioner's unlawful warrantless arrest, it necessarily follows that there could have been no valid search incidental to a lawful arrest. Further, it is emphasized that the search was made even before petitioner was arrested, violating the cardinal rule that there must first be a lawful arrest before a search can be made. Absent the requisite lawful arrest that must precede the search, such search cannot be considered legal and the pieces of evidence obtained therefrom are inadmissible.³⁷

At this juncture, the record reflects that petitioner acknowledged his waiver of the right to question the illegality of his arrest as he had entered his plea and actively participated in the case. Nonetheless, the Court agrees with his assertion that he is not barred from questioning the admissibility of the

³³ *People vs. Comprado*, 829 Phil. 229, 245 (2018).

³⁴ 652 Phil. 347 (2010).

³⁵ 378 Phil. 1073 (1999).

³⁶ *Id.* at 1078-1079.

³⁷ *People vs. Pangcatan y Dimao*, G.R. No. 245921, 5 October 2020.

evidence seized in connection with the illegal arrest.³⁸ The waiver to question an illegal arrest only affects the jurisdiction of the court over his person, but does not constitute a waiver of the inadmissibility of evidence seized during an illegal warrantless arrest.³⁹

With the foregoing discourse, the Court rules and so holds that the subject firearm and ammunitions are inadmissible in evidence for being recovered during an unreasonable search and seizure. Perforce, petitioner's acquittal is in order.⁴⁰

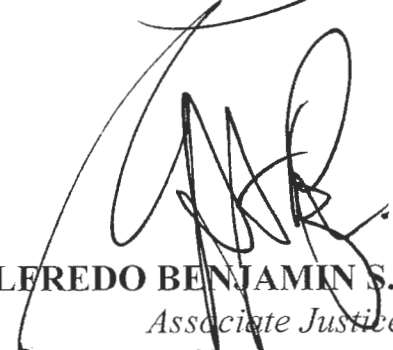
WHEREFORE, the Petition for Review on *Certiorari* is hereby **GRANTED**. The *Decision* dated 8 September 2020 and the *Resolution* dated 27 May 2021 of the Court of Appeals in CA-G.R. CEB-CR No. 03144 are **REVERSED** and **SET ASIDE**. Accordingly, petitioner Ian Agravante y De Oca is **ACQUITTED** of the crime of Illegal Possession of Firearm and Ammunition, defined and penalized under Section 1, Paragraph 2 of Presidential Decree No. 1866, as amended.

Let an entry of final judgment be issued immediately.

SO ORDERED.


JAPAR B. DIMAAMPAO
Associate Justice

WE CONCUR:

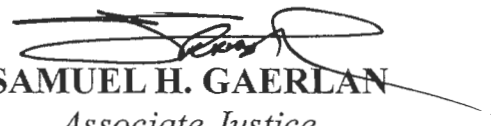

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson

³⁸ *Rollo*, p. 24.

³⁹ See *Sindac vs. People*, 794 Phil. 421, 436 (2016). Emphasis omitted.

⁴⁰ See *Trinidad vs. People*, G.R. No. 239957, 18 February 2019, 893 SCRA 228-241; and *Picardal v. People*, G.R. No. 235749, 19 June 2019, 905 SCRA 476, 486-487.

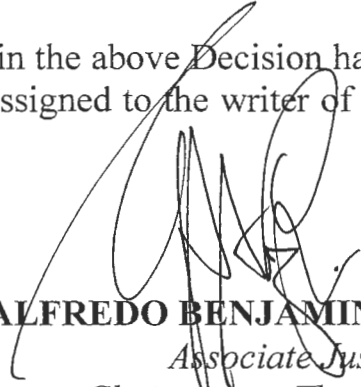

HENRI JEAN PAUL B. INTING
Associate Justice


SAMUEL H. GAERLAN
Associate Justice


MARIA EULOMENA D. SINGH
Associate Justice

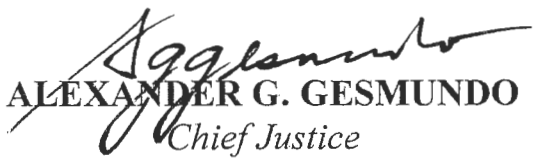
ATTESTATION

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.


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson, Third 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 this Court.


ALEXANDER G. GESMUNDO
Chief Justice