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AUG 13 2019
BY: YSA
TIME: 9:10

Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

WILLIAM CRUZ y G.R. No. 238141
FERNANDEZ and VIRGILIO
FERNANDEZ y TORRES,
Petitioners,

Present:

CARPIO, J., Chairperson,
PERLAS-BERNABE,
CAGUIOA,
J. REYES, JR., and
LAZARO-JAVIER, JJ.

- versus -

PEOPLE OF THE
PHILIPPINES,
Respondent.

Promulgated:

01 JUL 2019

X-----*MA Cabalagha*-----X

DECISION

PERLAS-BERNABE, J.:

Before this Court is a petition for review on *certiorari*¹ seeking to annul and set aside the Decision² dated November 29, 2017 and the Resolution³ dated March 14, 2018 of the Court of Appeals (CA) in CA-G.R. CR. No. 38062, which affirmed the Joint Decision⁴ dated September 29, 2015 of the Regional Trial Court of Lingayen, Pangasinan, Branch 69 (RTC) in Criminal Case Nos. L-10557 and L-10558 finding petitioners Virgilio Fernandez y Torres (Virgilio) and William Cruz y Fernandez (William; collectively, petitioners) guilty beyond reasonable doubt of violating Section 3 (c)⁵ of Republic Act No. (RA) 9287,⁶ otherwise known as the “Illegal Gambling Law.”

¹ Rollo, pp. 12-23.

² Id. at 28-36. Penned by Associate Justice Nina G. Antonio-Valenzuela with Associate Justices Stephen C. Cruz and Samuel H. Gaerlan, concurring.

³ Id. at 38-39.

⁴ Id. at 50-54. Penned by Presiding Judge Loreto S. Alog, Jr.

⁵ Section 3. *Punishable Acts.* – Any person who participates in any illegal numbers game shall suffer the following penalties:

x x x x

c) The penalty of imprisonment from eight (8) years and one (1) day to ten (10) years, if such person acts as a **collector or agent**[.] (Emphasis and underscoring supplied)

⁶ Entitled “AN ACT INCREASING THE PENALTIES FOR ILLEGAL NUMBERS GAMES, AMENDING CERTAIN PROVISIONS OF PRESIDENTIAL DECREE NO. 1602, AND FOR OTHER PURPOSES,” approved on April 2, 2004.

The Facts

This case stemmed from two (2) Informations⁷ filed before the RTC, charging petitioners with violation of Section 3 (d)⁸ of RA 9287 for unlawfully engaging in an illegal gambling bookies activity. The prosecution alleged that on July 10, 2015, the Chief of Police of Binmaley, Pangasinan, instructed Police Officer 3 Ramon de Guzman (PO3 de Guzman) and Police Officer 2 Joel Sabordo (PO2 Sabordo) to conduct a surveillance of illegal gambling activities along Mabini Street in Barangay Poblacion, Binmaley, Pangasinan. Upon arriving thereat, PO3 de Guzman and PO2 Sabordo saw petitioners from a distance of around five (5) meters carrying ball pens, *papelitos*, and money and allegedly collecting *jueteng*⁹ bets from some persons. They then approached petitioners and asked them if they were employees of Meredien Vista Gaming Corporation (MVGC). When petitioners failed to show any authority to conduct business, PO3 de Guzman and PO2 Sabordo began arresting them, confiscated their ball pens, *papelitos*, and money, and thereafter, brought them to the police station.¹⁰

Both petitioners pleaded not guilty to the crime charged,¹¹ but only Virgilio testified during trial.¹² He maintained that at the time of the incident, he went to see his wife in Mabini Street and saw William along the way. Moments later, some policemen arrived and invited them to the police station for questioning. At the police station, they discovered that they were being charged with violation of RA 9287 for allegedly participating in an illegal numbers game. Virgilio, however, denied the charges.¹³

The RTC Ruling

In a Joint Decision¹⁴ dated September 29, 2015, the RTC found petitioners guilty beyond reasonable doubt of violating Section 3 (c) of RA 9287, and accordingly, sentenced each of them to suffer the penalty of imprisonment for an indeterminate period of eight (8) years and one (1) day,

⁷ Both dated July 13, 2015. Records (Crim. Case No. L-10557), p. 1; and records (Crim. Case No. L-10558), p. 1

⁸ Section 3. *Punishable Acts.* – Any person who participates in any illegal numbers game shall suffer the following penalties:

x x x x

d) The penalty of imprisonment from ten (10) years and one (1) day to twelve (12) years, if such person acts as **a coordinator, controller or supervisor** [.] (Emphasis and underscoring supplied)

⁹ Note that the Informations state that “Jai-Alai” was conducted (See records [Crim. Case No. L-10557], p. 1; and records [Crim. Case No. L-10558], p. 1), but narration in the decisions of the lower courts, including the Brief for the Appellee, indicates the documents confiscated as one used in “*Jueteng*” (see *rollo*, pp. 29, 34, 50, 51, and 59).

¹⁰ See *rollo*, pp. 30-31 and 51-52.

¹¹ See *id.* at 30.

¹² See *id.* at 31.

¹³ See *id.*

¹⁴ *Id.* at 50-54.

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as minimum, to nine (9) years, as maximum.¹⁵ It upheld the validity of petitioners' warrantless arrest as it was shown that they were caught *in flagrante delicto* collecting and soliciting bets for an illegal numbers game called "*jueteng*." It pointed out that their acts of receiving money and writing on some pieces of paper engendered a well-founded belief on the part of the police officers that they were actually committing an offense under RA 9287.¹⁶ It likewise observed that the seized *papelitos* contained number combinations and bet amounts that were used in the game of *jueteng*, and that mere possession of such gambling paraphernalia is deemed *prima facie* evidence of a violation of RA 9287.¹⁷

Aggrieved, petitioners appealed¹⁸ to the CA.

The CA Ruling

In a Decision¹⁹ dated November 29, 2017, the CA affirmed *in toto* petitioners' conviction. It held that petitioners' bare denials cannot be given credence in light of the arresting officers' positive and categorical statement that they caught petitioners in the act of soliciting bets for *jueteng*; and as such, they had conducted a valid *in flagrante delicto* arrest on petitioners.²⁰

Undaunted, petitioners filed a motion for reconsideration,²¹ which was likewise denied in a Resolution²² dated March 14, 2018; hence, this petition.

The Issue Before the Court

The issue to be resolved by the Court is whether or not the CA erred in affirming the conviction of petitioners for violation of Section 3 (c) of RA 9287.

The Court's Ruling

"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

¹⁵ Id. at 54.

¹⁶ See id. at 53.

¹⁷ See id. at 54.

¹⁸ See Notice of Appeal dated September 29, 2015; records (Crim. Case No. L-10557), p. 59 and records (Crim. Case No. L-10558), p. 59.

¹⁹ *Rollo*, pp. 28-36.

²⁰ Id. at 34-35.

²¹ Dated January 10, 2018. *CA rollo*, pp. 94-98.

²² *Rollo*, pp. 38-39.

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.”²³

Guided by this consideration, and as will be explained hereunder, the Court believes that petitioners’ conviction must be set aside.

Section 2, Article III²⁴ 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 becomes ‘unreasonable’ within the meaning of said constitutional provision.** To protect the people from unreasonable searches and seizures, Section 3 (2), Article III²⁵ 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.²⁶

One of the recognized exceptions to the need for a warrant before a search may be affected is a search incidental to a lawful arrest. **In this instance, the law requires that there first be a lawful arrest before a search can be made — the process cannot be reversed.**²⁷ Relatedly, a lawful arrest may be effected with or without a warrant. With respect to the latter, a warrantless arrest may be done when, *inter alia*, the accused is caught *in flagrante delicto* pursuant to Section 5 (a), Rule 113 of the Revised Rules on Criminal Procedure, which states:

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[.]** (Emphasis and underscoring supplied)

²³ See *Sindac v. People*, 794 Phil. 421, 427 (2016); and *People v. Comboy*, 782 Phil. 187, 196 (2016).

²⁴ 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.

²⁵ 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.

²⁶ See *Trinidad v. People*, G.R. No. 239957, February 18, 2019, citing *Sindac v. People*, supra note 23, at 428.

²⁷ See *Trinidad v. People*, id.

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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**. Essentially, the arresting officer must have personal knowledge of the fact of the commission of an offense, *i.e.*, he must have personally witnessed the same.²⁸

In *Villamor v. People*,²⁹ a case which also involved alleged illegal gambling activities, the Court held that the conduct of an *in flagrante delicto* warrantless arrest therein is unlawful because of the arresting officers' failure to reasonably ascertain that the criminal activity was afoot before proceeding with the same. In that case, the Court remarked that it was highly suspect for the apprehending officers to have witnessed an overt act indicating that the accused therein had just committed, were actually committing, or were attempting to commit a violation of RA 9287, considering, *inter alia*, the distance of the police officers from the purported *locus criminis*, *viz.*:

[T]he Court finds it doubtful that the police officers were able to determine that a criminal activity was ongoing to allow them to validly effect an *in flagrante delicto* warrantless arrest and a search incidental to a warrantless arrest thereafter. x x x **It appears that the police officers acted based solely on the information received from PD Peñaflor's informant and not on personal knowledge that a crime had just been committed, was actually being committed, or was about to be committed in their presence.** x x x PO1 Saraspi even admitted that **from his position outside the compound, he could not read the contents of the so-called "papelitos"; yet, upon seeing the calculator, phone, papers and money on the table, he readily concluded the same to be gambling [paraphernalia].**

On the part of PD Peñaflor, he likewise admitted that **from his position outside the compound, he could not determine the activities of the persons inside.** x x x.

x x x x

From the circumstances above, it is highly suspect that PD Peñaflor had witnessed any overt act indicating that the petitioners were actually committing a crime. While PD Peñaflor claims that he caught the petitioners in the act of collecting bets and counting bet money, **this observation was highly improbable given the distance of the police from the petitioners and the fact that the compound was surrounded by a bamboo fence.**³⁰ (Emphases and underscoring supplied)

²⁸ See *Sindac v. People*, *supra* note 23, at 429-430.

²⁹ G.R. No. 200396, March 22, 2017, 821 SCRA 328.

³⁰ *Id.* at 343-346.

In this case, the Court similarly finds that there could have been no lawful *in flagrante delicto* warrantless arrest made on petitioners. Based on the records, PO3 de Guzman himself admitted that he and PO2 Sabordo were about five (5) meters away from petitioners when they allegedly saw petitioners carrying *papelitos*, ball pens, and money. Perceiving that the same constitute gambling paraphernalia, the arresting officers immediately concluded that petitioners were engaged in illegal gambling activities, *i.e.*, collecting *jueteng* bets, prompting them to swoop in with the intention of arresting petitioners. Pertinent portions of PO3 de Guzman's testimony reads:

[Prosecutor Jeffrey Catungal]: When conducting surveillance particular place [sic], did you proceed to conduct surveillance?

[PO3 de Guzman]: We conduct surveillance at Brgy. Poblacion particularly Mabini Street Binmaley, Pangasinan, sir.

Q: In going to the said place, what purposes of conducting surveillance [sic], was there anything that called your attention?

A: Yes, there were two (2) male factors, sir.

Q: **What were you able to see or observe from them, if any?**

A: **They were collecting bets, sir.**

Q: **How sure are you that they were collecting bets?**

A: **They have [paraphernalia], sir.**

Q: When you said they have [paraphernalia], what [paraphernalia]?

A: In collecting *jueteng* bets, sir.

Q: **How far were you from them?**

A: **Almost 5 meters away, sir.**

COURT:

Q: **What those [paraphernalia] you are referring to?**

A: **[Ball pen], *papelitos* and money, sir.**³¹ (Emphases and underscoring supplied)

Considering that the arresting officers were at a considerable distance of about five (5) 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 items were being used as gambling paraphernalia. In an effort to legitimize the warrantless arrest and the consequent search made incidental thereto, the arresting officers insist that the arrest was made only after ascertaining that petitioners were not MVGC employees. However, the fact that petitioners were: (a) holding ball pens, *papelitos*, and money; and (b) not MVGC employees do not, by themselves, constitute an illegal gambling activity punishable under RA 9287. Notably, there was no other overt act that could

³¹ TSN, September 1, 2015, pp. 4-5.

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be properly attributed to petitioners so as to rouse suspicion in the minds of the arresting officers that the former had just committed, were committing, or were about to commit a crime. Verily, these circumstances are not enough to justify a valid *in flagrante delicto* warrantless arrest on petitioners.

As a consequence of petitioners' unlawful warrantless arrest, it necessarily follows that there could have been no valid search incidental to a lawful arrest which had yielded the alleged illegal gambling paraphernalia from petitioners. Notably, while petitioners are deemed to have waived any objections as to the legality of their arrest due to their failure to question the same before arraignment and their active participation in trial, it must be clarified that the foregoing constitutes a waiver only as to any question concerning any defects in their arrest, and not with regard to the inadmissibility of the evidence seized during an illegal warrantless arrest.³² In *Sindac v. People*,³³ the Court held:

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.³⁴ (Emphasis and underscoring supplied)

In fine, since the items seized by the police officers are inadmissible against petitioners – as they were obtained in violation of petitioners' right against unreasonable searches and seizures – and given that the alleged illegal gambling paraphernalia is the very *corpus delicti* of the crime charged,³⁵ the Court is hereby constrained to acquit petitioners.

WHEREFORE, the petition is **GRANTED**. The Decision dated November 29, 2017 and the Resolution dated March 14, 2018 of the Court of Appeals in CA-G.R. CR. No. 38062 are hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioners William Cruz y Fernandez and Virgilio Fernandez y Torres are **ACQUITTED** of the crime charged.

³² See supra note 23, at 435.

³³ Id.

³⁴ Id. at 436, citing *Homar v. People*, 768 Phil. 195, 209 (2015).

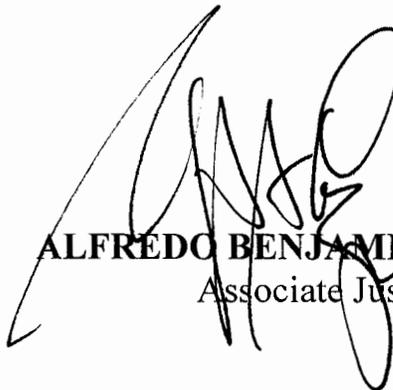
³⁵ *Villamor v. People*, supra note 29, at 349.

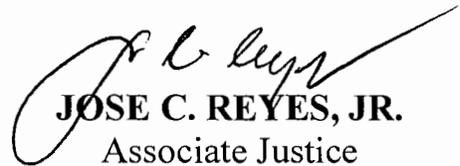
SO ORDERED.

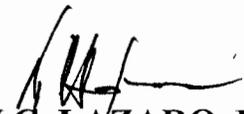

ESTELA M. PERLAS-BERNABE
 Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
 Senior Associate Justice
 Chairperson


ALFREDO BENJAMIN S. CAGUIOA
 Associate Justice


JOSE C. REYES, JR.
 Associate Justice


AMY C. LAZARO-JAVIER
 Associate Justice

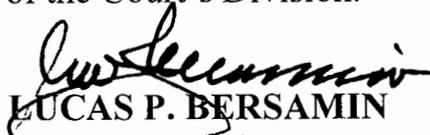
ATTESTATION

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
 Senior 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.


LUCAS P. BERSAMIN
 Chief Justice