



Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
 PUBLIC INFORMATION OFFICE

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FIRST DIVISION

MARTIN VILLAMOR y TAYSON, and
VICTOR BONAOBRA y GIANAN,
Petitioners,

G.R. No. 200396

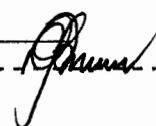
Present:

SERENO, *C.J.*, Chairperson,
 LEONARDO-DE CASTRO,
 DEL CASTILLO,
 REYES,* and
 CAGUIOA, *JJ.*

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:
MAR 22 2017

X ----- X 

DECISION

DEL CASTILLO, J.:

The Constitution guarantees 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.¹ A mere tip from an unnamed informant does not vest police officers with the authority to barge into private homes without first securing a valid warrant of arrest or search warrant. While there are instances where arrests and searches may be made without a warrant, the Court finds that the constitutionally-protected right against unreasonable searches and seizures was violated in the case at bar.

This Petition for Review under Rule 45 of the Rules of Court seeks to set aside the June 13, 2011 Decision² of the Court of Appeals (CA) in CA-G.R. CR No. 30457 which affirmed the October 25, 2006 Judgment³ of the Regional Trial Court (RTC), Branch 43 of Virac, Catanduanes in Criminal Case Nos. 3463 and 3464, convicting both petitioners for Violation of Presidential Decree (PD) No. 1602 as amended by Republic Act (RA) No. 9287, otherwise known as “An Act Increasing the Penalties for Illegal Numbers Games Amending Certain Provisions of PD 1602 and for Other Purposes.” Petitioner Martin T. Villamor (Villamor) was convicted as a collector of bets in the illegal numbers game of “*lotteng*” under Section 3(c) of RA 9287, while petitioner Victor G. Bonaobra (Bonaobra)

* Per Raffle dated March 20, 2017.

¹ THE 1987 CONSTITUTION, Article III, Section 2.

² CA *rollo*, pp. 162-170; penned by Associate Justice Mario L. Guariña III and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Manuel M. Barrios.

³ Records (Crim. Case No. 3463), pp. 205-215; penned by Presiding Judge Lelu P. Contreras.

was convicted as a coordinator, controller, or supervisor under Section 3(d) of the said law. The RTC sentenced Villamor to suffer the penalty of imprisonment from eight (8) years and one (1) day as minimum to nine (9) years as maximum, while Bonaobra was sentenced to suffer the penalty of imprisonment of ten (10) years and one (1) day as minimum to eleven (11) years as maximum.

Factual Antecedents

Villamor was charged with violation of Section 3(c) of RA 9287 for collecting and soliciting bets for an illegal numbers game locally known as “lotteng” and possessing a list of various numbers, a calculator, a cellphone, and cash. The charge stemmed from the following Information:⁴

That on or about the 17th day of June 2005 in the morning, in barangay Francia, municipality of Virac, province of Catanduanes, Philippines, within the jurisdiction of this Honorable Court the said accused with intent [to] gain thru illegal means did then and there, [willfully], unlawfully and feloniously engage, collect [and] solicit x x x bets for illegal numbers game locally known as “Lotteng” by having in his possession [a] calculator, cellphone, [list] of various numbers and money and lotteng paraphernalias.

CONTRARY TO LAW.

Another Information⁵ was filed in the same court charging Bonaobra with violation of the same law, committed as follows:

That on or about the 17th day of June 2005 in the morning, in barangay Francia, municipality of Virac, province of Catanduanes, Philippines, within the jurisdiction of this Honorable Court the said accused with intent [to] gain thru illegal means did then and there, [willfully], unlawfully and feloniously maintain and operate illegal numbers game locally known as “lotteng” while in possession of gambling paraphernalias, such as [a] calculator, cellphone, list of various numbers and cash in the amount of ₱1,500.00 representing collection of bets.

CONTRARY TO LAW.

Petitioners filed their respective Motions for Reinvestigation, which were both granted by the RTC. Subsequently, the Office of the Provincial Prosecutor issued separate Resolutions both dated September 13, 2005 amending the Informations in both cases.

In the Amended Information, the phrase “acting as a collector” was included to charge Villamor as a collector in an illegal numbers game. The Amended Information⁶ provides:

⁴ Id. at 1-2.

⁵ Records (Crim. Case No. 3464), pp. 1-2.

⁶ Records (Crim. Case No. 3463), p. 37.

That on or about the 17th day of June 2005 in the morning, in barangay Francia, municipality of Virac, province of Catanduanes, Philippines, within the jurisdiction of this Honorable Court the said accused acting as a collector with intent [to] gain thru illegal means[,] did then and there, willfully, unlawfully and feloniously engage, collect and solicit bets for illegal numbers game locally known as “Lotteng” by having in his possession [a] calculator, cellphone, [list] of various numbers and money and lotteng paraphernalias.

CONTRARY TO LAW.

On the other hand, Bonaobra was charged as a manager or operator in the Amended Information,⁷ the incriminatory paragraph of which states:

That on or about the 17th day of June 2005 in the morning, in barangay Francia, municipality of Virac, province of Catanduanes, Philippines, within the jurisdiction of this Honorable Court the said accused acting as manager and operator with intent [to] gain thru illegal means did then and there, [willfully], unlawfully and feloniously maintain and operate illegal numbers game locally known as “lotteng” while in possession of gambling paraphernalia, such as [a] calculator, cellphone, lists of various numbers and cash in the amount of ₱1,500.00 representing collection of bets.

CONTRARY TO LAW.

When separately arraigned, Villamor, on October 4, 2005 and Bonaobra, on November 29, 2005, both pleaded not guilty to the respective charges filed against them. After the pre-trial conference, a joint trial on the merits followed.

Version of the Prosecution

The prosecution presented four witnesses, namely: Domingo Tejerero (Tejerero), Provincial Director, Police Superintendent Francisco Peñaflor (PD Peñaflor), SPO4 Severino Malasa, Jr., and PO1 David Adrian Saraspi (PO1 Saraspi). Culled from the records were the following facts:

On June 17, 2005, at around 9:00 a.m., PD Peñaflor received a call from an informant regarding an ongoing illegal numbers game at *Barangay* Francia, Virac, Catanduanes, specifically at the residence of Bonaobra. A team composed of PD Peñaflor, Saraspi, PO1 Rolando Ami, a driver, and a civilian asset proceeded to Bonaobra’s residence to confirm the report.

Upon arrival at the target area, the team parked their service vehicle outside the compound fenced by bamboo slats installed two inches apart which allowed them to see the goings on inside. According to the police officers, they saw

⁷ Records (Crim. Case No. 3464), p. 28.

petitioners in the act of counting bets, described by the Bicol term “*revisar*,” which means collating and examining numbers placed in “*papelitos*,” which are slips of paper containing bet numbers, and counting money bets.

When they entered the gate of the compound, they introduced themselves as police officers and confiscated the items found on the table consisting of cash amounting to ₱1,500.00 in different denominations, the “*papelitos*,” a calculator, a cellular phone, and a pen. Petitioners were then brought to Camp Francisco Camacho where they were investigated for illegal gambling. Subsequently, a case was filed against the petitioners before the Office of the Provincial Prosecutor.

Version of the Defense

The defense presented six witnesses, namely Villamor, Bonaobra, Demetrio Bonaobra, the brother of Bonaobra, Florencio Bonaobra (Florencio), the father of Bonaobra, Juan Vargas, and Jonah Bonaobra (Jonah), the wife of Bonaobra. Their testimonies are summarized below.

On June 17, 2005, at around 8:30 a.m., Villamor went to Bonaobra’s house to pay a debt he owed to the latter’s wife, Jonah. At that time, Bonaobra was having coffee with his father Florencio inside their house. Villamor gave Bonaobra ₱2,000.00 which the latter placed on top of the table. Bonaobra then went outside the house to answer his cellphone. When Bonaobra was at the door, a man later identified as PD Peñaflor kicked the fence of Bonaobra’s house, grabbed Bonaobra’s right arm, and said, “*Caught in the act ka!*” Florencio went outside and asked PD Peñaflor if he had a search warrant. Two more men entered the house and took the money from the table. Petitioners were then made to board the service vehicle and brought in for investigation at the police headquarters.

Ruling of the Regional Trial Court

On October 25, 2006, the RTC of Virac, Catanduanes, Branch 43 rendered its Judgment finding petitioners guilty beyond reasonable doubt of committing illegal numbers game locally known as “*lotteng*,” a variant of the game *Last Two*,⁸ respectively as a collector or agent under Section 3(c), and as a coordinator, controller, or supervisor under Section 3(d), of RA 9287.

The RTC gave credence to the testimonies of the arresting officers and held that petitioners were caught *in flagrante delicto* committing an illegal numbers game locally known as “*lotteng*,” a variant of *Last Two*. The RTC held that

⁸ An illegal numbers game where the winning combination is derived from the last two (2) numbers of the first prize of the winning Sweepstakes ticket which comes out during the weekly draw of the Philippine Charity Sweepstakes Office, and its variants.

petitioners were seen by the arresting officers in the act of counting bets before the arrest was made inside Bonaobra's compound. The petitioners were also caught holding "*papelitos*," which contained the three rows of two-number combinations. Since the winning combination in "*lotteng*" is taken from the first two numbers of the winning combinations in the daily draw of the lotto in the Philippine Charity Sweepstakes, the RTC held that the number combinations shown in the "*papelitos*" were meant to correspond to the lotto results.

The RTC further held that Villamor's participation in the illegal numbers game was that of a collector since he brought bet money to Bonaobra while the latter was that of a coordinator, controller, or supervisor after it was shown that he received the money from Villamor.

The dispositive part of the Judgment of the RTC reads:

WHEREFORE, applying the Indeterminate Sentence Law, this Court hereby SENTENCES Martin Villamor to suffer a penalty of imprisonment from eight (8) years and one (1) day as minimum to nine (9) years as maximum, and Victor Bonaobra to suffer a penalty of ten (10) years and one (1) day as minimum to eleven (11) years as maximum. Likewise, the money amounting to ₱1,500.00 and the other personal properties used as gambling paraphernalia, like the calculator, ballpen and cellular phone are confiscated in favor of the state.

SO ORDERED⁹

Ruling of the Court of Appeals

On June 13, 2011, the CA affirmed the RTC's Decision. The CA brushed aside Bonaobra's argument that his right to due process was violated when he was convicted of a crime different from that with which he was charged. The CA held that the classification of a maintainer, manager, or operator includes a coordinator, controller, or supervisor.¹⁰ The CA ratiocinated that to hold a maintainer guilty of the lesser offense of acting as a coordinator will not be violative of his right to be informed of the nature and cause of his accusation since the graver offense of acting as a maintainer necessarily includes being a coordinator.

With respect to Villamor, the CA gave more weight and credence to the testimonies of the arresting officers who were presumed to have acted regularly in the performance of their official functions. The CA held that Villamor's denials cannot prevail over the positive assertions of the police officers who caught him in the act of revising and counting bets.



⁹ Records (Crim. Case No. 3463), p. 215.

¹⁰ CA *rollo*, p. 168.

The CA disposed the case as follows:

IN VIEW OF THE FOREGOING, the decision appealed from is affirmed.

SO ORDERED.¹¹

Hence, this Petition.

Issue

The main issue in this case is whether the petitioners' conviction for violation of RA 9287 as collector or agent under Section 3(c) for Villamor, and as coordinator, controller, or supervisor under Section 3(d) for Bonaobra, should be upheld.

Our Ruling

We find the Petition meritorious.

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] x x x grounds other than those that the parties raised as errors."¹²

The Court finds that the right of the petitioners against unreasonable searches and seizures was violated by the arresting officers when they barged into Bonaobra's compound without a valid warrant of arrest or a search warrant. While there are exceptions to the rule requiring a warrant for a valid search and seizure, none applies in the case at bar. Consequently, the evidence obtained by the police officers is inadmissible against the petitioners, the same having been obtained in violation of the said right.

Section 2, Article III of the 1987 Constitution requires a judicial warrant based on the existence of probable cause before a search and an arrest may be effected by law enforcement agents. Without the said warrant, a search or seizure becomes unreasonable within the context of the Constitution and any evidence obtained on the occasion of such unreasonable search and seizure shall

¹¹ Id. at 169-170.

¹² *People v. Saludes*, 451 Phil. 719, 728 (2003).



be inadmissible in evidence for any purpose in any proceeding.¹³ “Evidence obtained and confiscated on the occasion of such an unreasonable search and seizure is tainted and should be excluded for being the proverbial fruit of the poisonous tree.”¹⁴

In this case, the apprehending officers claim that petitioners were caught *in flagrante delicto*, or caught in the act of committing an offense. PD Peñaflor and his team of police officers claim that petitioners were committing the offense of illegal numbers game when they were arrested without a warrant.

We are not persuaded.

Under Section 5 of Rule 113 of the Rules of Court, a lawful arrest may be effected even without a warrant of arrest in the following instances:

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 in fact 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 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.

In warrantless arrests made pursuant to Section 5(a), Rule 113, two elements must concur, namely “(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.”¹⁵

After a judicious review of the records of the case, the Court finds that there was no valid warrantless arrest on petitioners. It was not properly established that

¹³ THE 1987 CONSTITUTION, Article III, Section 3(2) states:
Sec. 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.

¹⁴ *Ambre v. People*, 692 Phil. 681, 693 (2012).

¹⁵ *People v. Villareal*, 706 Phil. 511, 517-518 (2013).

petitioners had just committed, or were actually committing, or attempting to commit a crime and that said act or acts were done in the presence of the arresting officers. Based on the testimonies of PO1 Saraspi and PD Peñafior, they were positioned some 15 to 20 meters away from petitioners. PO1 Saraspi's testimony during cross examination reveals the following:

ATTY. SAMONTE:

Q While you were outside the compound of Bonaobra, what was your distance to accused Martin Villamor and Victor Bonaobra?

A More or less fifteen (15) to twenty (20) meters.

Q Is it not that the compound of Bonaobra is surrounded with fence?

A Yes, sir.

Q Bamboo fence, right?

A Yes, sir, without a gate.

Q Are you sure it's without a gate?

A Probably it was open.

Q Can you determine the height of the fence?

A Between 5'7" to 5'9".

Q More than your height?

A Yes, sir.

Q Can you tell us whether you can see what the person is doing inside the compound while you are outside?

A The fence is made up [sic] of bamboo and there were gaps as far as the fence is concerned that is why when we alighted from the Frontier we saw what was inside the compound.

Q And the space of each bamboo, can you determine [sic]?

A One and half to two inches apart.

Q When you were already outside the compound what were the accused doing?

A They were sitting and they were revising.

Q Were they seated with [sic] a table?

A They were sitting and Victor Bonaobra was without a shirt.

Q What were they holding?

A 'Papelitos'.


Q What else?

A While they were holding 'papelitos' the monies were just on the table.

Q **At the distance of 15 to 10 meters can you determine the contents of the 'papelitos'?**

A No, sir.



- Q So you are not sure whether those are gambling paraphernalia?**
A No, sir.
- Q Because you do not know the contents of that and you are not sure whether those are gambling paraphernalia you went inside, is that right?
A After we introduced ourselves that we are [sic] police officers we entered the compound.
- Q Meaning to say you were outside the compound and saying you are policemen?
A We entered first and we introduced ourselves.
- Q Which is first, going inside or introducing yourselves?
A While entering we were also introducing ourselves simultaneously.
- Q When you reached inside, what did you determine?
A We determined that there were lotteng paraphernalia on the table.
- Q That is the only time that you determined that those were gambling paraphernalia?
A No, even on the [sic] outside we identified it already.
- Q A while ago you said at a distance of 15 to 10 meters you can determine whether they were in possession of the illegal gambling paraphernalia?
A What I am trying to say is that I cannot identify those that are written on the 'papelitos' at the distance and I saw the calculator, the money bets.
- Q So what you saw within a distance of 15 to 10 meters are calculators, money and cellphone?**
A Yes, sir.
- Q Do you consider money gambling paraphernalia?**
A Yes, sir.
- Q So every time you see money you will consider that a gambling paraphernalia?**
A In other situations.
- Q How about calculator, do you consider calculator gambling paraphernalia?**
A Yes, sir.
- Q When you go to a department store there are calculators, do you consider those calculators gambling paraphernalia?
A If you are going to consolidate all these items in a table all of these are gambling paraphernalia.
- Q So when you consolidate these items and papers and calculators, if you see those items at Century Trading, will you consider those as gambling paraphernalia?¹⁶
- 

¹⁶ TSN, March 8, 2006, p. 27-31. Emphasis supplied.

Considering that 15 to 20 meters is a significant distance between the police officers and the petitioners, the 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. The police officers even admitted that the compound was surrounded by a bamboo fence 5'7" to 5'9" in height, which made it harder to see what was happening inside the compound. 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. The Court finds it doubtful that the police officers witnessed any overt act before entering the private home of Bonaobra immediately preceding the arrest. 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 paraphernalias.

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. It was only after he had illegally entered the compound, since he was not armed with a warrant, that he supposedly saw the gambling paraphernalia. PD Peñaflor's testimony in this regard is as follows:

- Q Can you tell the Honorable Court, Mr. Witness, the distance of the house of Victor Bonaobra to that place where you parked your vehicle when you arrived in the vicinity?
- A When I parked my vehicle in front of the compound because that is a street, the distance from the street to that place where there is an on-going 'revisar' of 'lotteng', more or less 15 to 20 meters, I believe, from the gate.
- Q So, you did not immediately go inside the compound of Victor Bonaobra?
- A Yes, sir. I verified first if there is really [sic] persons in the compound.
- Q So, at that distance of 15 to 20 meters, you were able to verify what they were doing on the particular time, Mt. Witness?
- A No, sir.¹⁷

During his direct examination, Bonaobra testified that he was only answering his cellphone when PD Peñaflor barged into his compound and arrested him. The relevant portions of his testimony reveals the following:

ATTY SAMONTE:

- Q At around 9:00 a.m. of June 17, 2005, what were you doing if you still remember?

¹⁷ TSN, March 6, 2006, pp. 11-12.

A I stood up and I went out and made [sic] three steps from the door to answer the cellphone and later on I was surprised when the police whom I could not identify, kicked the door.

Q Mr. Witness, which door [are you] referring to [that] was kicked by the police?

A The gate outside of our fence.

x x x x

Q You said a while ago that the policeman kicked the door of your fence x x x who was that policeman, if you know him?

A: Provincial Director Peñaflor.

Q: Who was with PD Peñaflor on [sic] that particular time, if any, Mr. Witness?

A Two (2) persons in civilian clothes.

x x x x

Q After PD Peñaflor kicked the door of your fence, what happened next, Mr. Witness?

A He held my hand and he seized my cellphone.

x x x x

Q After PD Peñaflor seized your cellphone, what else did he do?

A He said, "caught in the act."

Q Which comes first, Mr. Witness, the utterance made by PD Peñaflor that you were caught in the act or the utterance made by your father whether they had a warrant?

A When my father asked them whether they have a warrant.

Q And what was the answer of PD Peñaflor when your father asked that question?

A He said, "caught in the act."

Q And what was the reply of your father?

A My father said that what you are doing is wrong, that is prohibited.

Q And what did PD Peñaflor answered [sic] to your father?

A He shouted at my father, "Di na kailangan yan" (That is not needed),¹⁸

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.



¹⁸ TSN, September 22, 2006, pp. 4-5.

For his part, Villamor claimed that he was at the Bonaobra compound to repay his loan to Jonah. The prosecution, through Prosecutor Tañon, even admitted this fact during Jonah's direct examination. The following exchange between the prosecution and the defense was quite revealing:

ATTY. SAMONTE:

Your Honor, please, [may] I respectfully offer the testimony of Jona[h] Bonaobra to show that she is the wife of Victor Bonaobra; that at around 8:30 a.m. of June 17, 2005 she was inside their residence at Bonaobra's compound, Francia, Virac, Catanduanes and on that particular time and date, Martin Villamor arrived to pay his debt and she personally witnessed the unlawful act committed by the policemen who entered their dwelling on that particular time and date and such other matters relative thereto, Your Honor.

COURT:

Any comment from the prosecution?

PROS. TAÑON:

We will admit that she is the wife of Victor Bonaobra; that on June 17, 2005 at 8:30 in the morning she was inside the residence of Bonaobra's compound; **that accused Martin Villamor arrived to pay his debt.** We are to contest on that she personally witnessed the unlawful act.

ATTY. SAMONTE:

To clarify that, the prosecution is admitting the fact that Martin arrived to pay the loan on that particular day?

PROS. TAÑON:

Yes, Your Honor.

COURT:

Okay, so that we can proceed to the other matters.¹⁹ (Emphasis supplied)

From the exchange above, it is clear that the prosecution admitted that Villamor went to Bonaobra's house to pay his loan to Jonah. Thus, at the exact moment of the arrest, neither Bonaobra, who was answering his cellphone, nor Villamor, who was paying his loan, was performing any overt act constitutive of a crime.

Verily, the warrantless arrest conducted by PD Peñaflor and his team was unlawful as the same does not satisfy the requirements of an *in flagrante delicto* arrest. Consequently, the search and seizure of the effects found inside the house of Bonaobra are likewise illegal since there could be no valid search incident to an illegal warrantless arrest. Thus, evidence seized from Bonaobra's house is inadmissible for being a fruit of the poisonous tree.



¹⁹ TSN, September 29, 2006, pp. 12-13. Emphasis supplied.

The Court is aware that any question regarding the legality of a warrantless arrest must be raised before arraignment. Failure to do so constitutes a waiver of the right to question the legality of the arrest especially when the accused actively participated during trial as in this case. However, we have clarified that such waiver is only confined to the defects of the arrest and not on the inadmissibility of the evidence seized during an illegal arrest. In *People v. Racho*,²⁰ the Court held that:

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’.

Without the confiscated *shabu*, appellant’s conviction cannot be sustained based on the remaining evidence. Thus, an acquittal is warranted, despite the waiver of appellant of his right to question the illegality of his arrest by entering a plea and his active participation in the trial of the case. As earlier mentioned, the legality of an arrest affects only the jurisdiction of the court over the person of the accused. **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.** (Emphasis supplied)

In this case, the prosecution failed to clearly establish the acts that constitute the offense of illegal gambling as a collector or an agent under Section 3(c), and as a coordinator, controller, or supervisor under Section 3(d), of RA 9287. Under the said law, a collector or agent is “any person who collects, solicits or produces bets in behalf of his/her principal for any illegal numbers game who is usually in possession of gambling paraphernalia.”²¹ On the other hand, a coordinator, controller, or supervisor is defined as, “any person who exercises control and supervision over the collector or agent.”²² The prosecution merely relied on the alleged illegal gambling paraphernalia found and confiscated inside the house of Bonaobra and not on the specific overt acts that constitute the offense.

All told, the evidence purportedly seized from the Bonaobra compound is inadmissible in evidence since it was obtained in violation of Section 3(2), Article III of the 1987 Constitution. Since the alleged illegal gambling paraphernalia is the very *corpus delicti* of the crime charged, the Court acquits petitioners.

WHEREFORE, the June 13, 2011 Decision of the Court of Appeals in CA-G.R. CR No. 30457 which affirmed the Judgment of the Regional Trial Court of Virac, Catanduanes, Branch 43 in Criminal Case Nos. 3463 and 3464 is hereby **REVERSED and SET ASIDE**. Petitioners Martin Villamor y Tayson and Victor Bonaobra y Gianan are **ACQUITTED** and are ordered to be

²⁰ 640 Phil. 669, 681 (2010).

²¹ REPUBLIC ACT NO. 9287, Section 2(g).

²² REPUBLIC ACT NO. 9287, Section 2(h).




immediately **RELEASED** from detention, unless they are confined for any other lawful cause.

The Director of the Bureau of Corrections is **DIRECTED** to **IMPLEMENT** this Decision and to report to this Court the action taken hereon within five days from receipt.

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson


TERESITA J. LEONARDO-DE CASTRO
Associate Justice


BIENVENIDO L. REYES
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
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

