

PEOPLE OF THE PHILIPPINES, PETITIONER, V.S. HON. PERFECTO A.S. LAGUIO, JR., IN HIS CAPACITY AS PRESIDING JUDGE, BRANCH 18, RTC, MANILA, AND LAWRENCE WANG Y CHEN, RESPONDENTS.

G.R. No. 128587. March 16, 2007

Ponente: GARCIA, J.

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GARCIA, J.:

On pure questions of law, petitioner People of the Philippines has directly come to this Court via this petition for review on certiorari to nullify and set aside the Resolution[1] dated 13 March 1997 of the Regional Trial Court of Manila, Branch 18, in Criminal Case Nos. 96-149990 to 96-149992, entitled *People of the Philippines v. Lawrence Wang y Chen*, granting private respondent Lawrence C. Wang's Demurrer to Evidence and acquitting him of the three (3) charges filed against him, namely: (1) Criminal Case No. 96-149990 for Violation of Section 16, Article III in relation to Section 2(e)(2), Article I of Republic Act (R.A.) No. 6425 (Dangerous Drugs Act); (2) Criminal Case No. 96-149991 for Violation of Presidential Decree No. 1866 (Illegal Possession of Firearms); and (3) Criminal Case No. 96-149992 for Violation of Comelec Resolution No. 2828 in relation to R.A. No. 7166 (COMELEC Gun Ban).

The three (3) separate Informations filed against Lawrence C. Wang in the court of origin respectively read:

Criminal Case No. 96-149990 (Violation of Dangerous Drugs Act):

That on or about the 17th day of May 1996, in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and knowingly have in his possession and under his custody and control a bulk of white and yellowish crystalline substance known as SHABU contained in thirty-two (32) transparent plastic bags weighing approximately 29.2941 kilograms, containing ethamphetamine hydrochloride, a regulated drug, without the corresponding license or prescription therefor.

Contrary to law.[2]

Criminal Case No. 96-149991 (Illegal Possession of Firearms):

That on or about the 17th day of May 1996, in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and knowingly have in his possession and under his custody and control one (1) DAEWOO Cal. 9mm, automatic pistol with one loaded magazine and one AMT Cal. .380 9mm automatic backup pistol with magazine loaded with ammunitions without first having secured the necessary license or permit therefor from the proper authorities.

Contrary to law. [3]

Criminal Case No. 96-149992 (Violation of Comelec Gun Ban):

That on or about the 17th day of May 1996, in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and knowingly have in his possession and under his custody and control one (1) DAEWOO Cal. 9mm automatic pistol with one loaded magazine and one (1) AMT Cal. 380 9mm automatic

backup pistol with magazine loaded with ammunitions, carrying the same along Maria Orosa St., Ermita, Manila, which is a public place, on the date which is covered by an election period, without first securing the written permission or authority from the Commission on Elections, as provided by the COMELEC Resolution 2828 in relation to Republic Act 7166.

Contrary to law. [4]

During his arraignment, accused Wang refused to enter a plea to all the Informations and instead interposed a continuing objection to the admissibility of the evidence obtained by the police operatives. Thus, the trial court ordered that a plea of "Not Guilty" be entered for him.[5] Thereafter, joint trial of the three (3) consolidated cases followed.

The pertinent facts are as follows:

On 16 May 1996, at about 7:00 p.m., police operatives of the Public Assistance and Reaction Against Crime of the Department of Interior and Local Government, namely, Captain Margallo, Police Inspector Cielito Coronel and SPO3 Reynaldo Cristobal, arrested SPO2 Vergel de Dios, Rogelio Anoble and a certain Arellano, for unlawful possession of methamphetamine hydrochloride, a regulated drug popularly known as shabu. In the course of the investigation of the three arrested persons, Redentor Teck, alias Frank, and Joseph Junio were identified as the source of the drug. An entrapment operation was then set after the three were prevailed upon to call their source and pretend to order another supply of shabu.

At around 11:00 p.m. that same date, Redentor Teck and Joseph Junio were arrested while they were about to hand over another bag of shabu to SPO2 De Dios and company. Questioned, Redentor Teck and Joseph Junio informed the police operatives that they were working as talent manager and gymnast instructor, respectively, of Glamour Modeling Agency owned by Lawrence Wang. Redentor Teck and Joseph Junio did not disclose their source of shabu but admitted that they were working for Wang.[6] They also disclosed that they knew of a scheduled delivery of shabu early the following morning of 17 May 1996, and that their employer (Wang) could be found at the Maria Orosa Apartment in Malate, Manila. The police operatives decided to look for Wang to shed light on the illegal drug activities of Redentor Teck and Joseph Junio. Police Inspector Cielito Coronel and his men then proceeded to Maria Orosa Apartment and placed the same under surveillance.

Prosecution witness Police Inspector Cielito Coronel testified that at about 2:10 a.m. of 17 May 1996, Wang, who was described to the operatives by Teck, came out of the apartment and walked towards a parked BMW car. On nearing the car, he (witness) together with Captain Margallo and two other police officers approached Wang, introduced themselves to him as police officers, asked his name and, upon hearing that he was Lawrence Wang, immediately frisked him and asked him to open the back compartment of the BMW car.[7] When frisked, there was found inside the front right pocket of Wang and confiscated from him an unlicensed AMT Cal. 380 9mm automatic Back-up Pistol loaded with ammunitions. At the same time, the other members of the operatives searched the BMW car and found inside it were the following items: (a) 32 transparent plastic bags containing white crystalline substance with a total weight of 29.2941 kilograms, which substance was later analyzed as positive for methamphetamine hydrochloride, a regulated drug locally known as shabu; (b) cash in the amount of P650,000.00; (c) one electronic and one mechanical scales; and (d) an unlicensed Daewoo 9mm Pistol with magazine. Then and there, Wang resisted the warrantless arrest and search.[8]

On 6 December 1996, the prosecution rested its case and upon motion, accused Wang was granted 25 days from said date within which to file his intended Demurrer to Evidence.[9] On 19 December 1996, the prosecution filed a Manifestation[10] to the effect that it had rested its case only in so far as the charge for Violation of the Dangerous Drugs Act in Criminal Case No. 96-149990 is concerned, and not as regards the two cases for Illegal

Possession of Firearms (Crim. Case No. 96-149991) and Violation of the Comelec Gun Ban (Crim. Case No. 96-149992). Accordingly, trial continued.

On 9 January 1997, Wang filed his undated Demurrer to Evidence, [11] praying for his acquittal and the dismissal of the three (3) cases against him for lack of a valid arrest and search warrants and the inadmissibility of the prosecution's evidence against him. Considering that the prosecution has not yet filed its Opposition to the demurrer, Wang filed an Amplification[12] to his Demurrer of Evidence on 20 January 1997. On 12 February 1997, the prosecution filed its Opposition[13] alleging that the warrantless search was legal as an incident to the lawful arrest and that it has proven its case, so it is now time for the defense to present its evidence.

On 13 March 1997, the respondent judge, the Hon. Perfecto A.S. Laguio, Jr., issued the herein assailed Resolution[14] granting Wang's Demurrer to Evidence and acquitting him of all charges for lack of evidence, thus:

WHEREFORE, the accused's undated Demurrer to Evidence is hereby granted; the accused is acquitted of the charges against him for the crimes of Violation of Section 16, Article III of the Dangerous Drugs Act, Illegal Possession of Firearms, and Violation of Comelec Gun Ban, for lack of evidence; the 32 bags of shabu with a total weight of 29.2941 kilograms and the two unlicensed pistols, one AMT Cal. .380 9mm and one Daewoo Cal. 9mm. are ordered confiscated in favor of the government and the branch clerk is directed to turn over the 32 bags of shabu to the Dangerous Drugs Board in Intramuros, Manila, and the two firearms to the Firearms and Explosive Units, PNP, Camp Crame, Quezon City, for proper disposition, and the officer-in-charge of PARAC, Department of Interior and Local Government, is ordered to return the confiscated amount of P650,000.00 to the accused, and the confiscated BMW car to its registered owner, David Lee. No costs.

SO ORDERED.

Hence, this petition[15] for review on certiorari by the People, submitting that the trial court erred -

I

XXX IN HOLDING THAT THE UNDISPUTED FACTS AND CIRCUMSTANCES DID NOT CONSTITUTE PROBABLE CAUSE WITHIN THE CONTEMPLATION OF SECTION 2, ARTICLE III OF THE CONSTITUTION, AND IN HOLDING THAT SUCH FACTS AND CIRCUMSTANCES NEITHER JUSTIFIED THE WARRANTLESS SEARCH OF ACCUSED'S VEHICLE AND THE SEIZURE OF THE CONTRABAND THEREIN.

II

XXX IN HOLDING, IN EFFECT, THAT A WARRANTLESS SEARCH IS CONSTITUTIONALLY ALLOWABLE AND CAN ONLY BE VALID AS AN INCIDENT TO A LAWFUL ARREST.

III

XXX IN DECLARING THE WARRANTLESS ARREST OF THE ACCUSED AND THE SEARCH AND SEIZURE OF HIS HANDGUNS UNLAWFUL.

IV

XXX IN NOT DECLARING THE ACCUSED AS HAVING WAIVED, AS A RESULT OF HIS SUBMISSION AND FAILURE TO PROTEST THE SEARCH AND HIS ARREST, HIS CONSTITUTIONAL RIGHT AGAINST UNREASONABLE SEARCH AND SEIZURE AND HIS OBJECTION TO THE ADMISSION OF THE EVIDENCE SEIZED.

V

XXX IN NOT ADMITTING IN EVIDENCE THE EVIDENCE SEIZED AND OFFERED BY THE PROSECUTION AND IN NOT DENYING ACCUSED'S DEMURRER TO EVIDENCE.

In its Resolution[16] of 9 July 1997, the Court, without giving due course to the petition, required the public and private respondents to comment thereon within ten days from notice. Private respondent Wang filed his comment[17] on 18 August 1997.

On 10 September 1997, the Court required the People to file a reply, [18] which the Office of the Solicitor General did on 5 December 1997, after several extensions.[19]

On 20 October 2004, the Court resolved to give due course to the petition and required the parties to submit their respective memoranda,[20] which they did.

The case presents two main issues: (a) whether the prosecution may appeal the trial court's resolution granting Wang's demurrer to evidence and acquitting him of all the charges against him without violating the constitutional proscription against double jeopardy; and (b) whether there was lawful arrest, search and seizure by the police operatives in this case despite the absence of a warrant of arrest and/or a search warrant.

First off, it must be emphasized that the present case is an appeal filed directly with this Court via a petition for review on certiorari under Rule 45 in relation to Rule 41, Section 2, paragraph (c) of the Rules of Court raising only pure questions of law, ordinary appeal by mere filing of a notice of appeal not being allowed as a mode of appeal directly to this Court. Then, too, it bears stressing that the right to appeal is neither a natural right nor a part of due process, it being merely a statutory privilege which may be exercised only in the manner provided for by law (*Velasco v. Court of Appeals*[21]). Although Section 2, Rule 122 of the Rules on Criminal Procedure states that any party may appeal, the right of the People to appeal is, in the very same provision, expressly made subject to the prohibition against putting the accused in double jeopardy. It also basic that appeal in criminal cases throws the whole records of the case wide open for review by the appellate court, that is why any appeal from a judgment of acquittal necessarily puts the accused in double jeopardy. In effect, the very same Section 2 of Rule 122 of the Rules on Criminal Procedure, disallows appeal by the People from judgments of acquittal.

An order granting an accused's demurrer to evidence is a resolution of the case on the merits, and it amounts to an acquittal. Generally, any further prosecution of the accused after an acquittal would violate the constitutional proscription on double jeopardy. To this general rule, however, the Court has previously made some exceptions.

The celebrated case of *Galman v. Sandiganbayan*[22] presents one exception to the rule on double jeopardy, which is, when the prosecution is denied due process of law:

No court whose Presiding Justice has received "orders or suggestions" from the very President who by an amendatory decree (disclosed only at the hearing of oral arguments on November 8, 1984 on a petition challenging the referral of the Aquino-Galman murder cases to the Tanodbayan and Sandiganbayan instead of to a court martial, as mandatorily required by the known P.D. 1850 at the time providing for exclusive jurisdiction of courts martial over criminal offenses committed by military men) made it possible to refer the cases to the Sandiganbayan, can be an impartial court, which is the very essence of due process of law. As the writer then wrote, "jurisdiction over cases should be determined by law, and not by preselection of the Executive, which could be much too easily transformed into a means of predetermining the outcome of individual cases." This criminal collusion as to the handling and treatment of the cases by public respondents at the secret Malacañang conference (and revealed only after fifteen months by Justice Manuel Herrera) completely disqualified respondent Sandiganbayan and voided ab initio its verdict. This renders moot and irrelevant for now the extensive arguments of respondents accused, particularly Generals Ver and Olivas and those categorized as accessories, that there has been no evidence or witness suppressed against them, that the erroneous conclusions of Olivas as police investigator do not make him an accessory of the crimes he investigated and the appraisal and evaluation of the testimonies of the witnesses presented and suppressed. There will be time and opportunity to present all these arguments and considerations at the remand and retrial

of the cases herein ordered before a neutral and impartial court.

The Supreme Court cannot permit such a sham trial and verdict and travesty of justice to stand unrectified. The courts of the land under its aegis are courts of law and justice and equity. They would have no reason to exist if they were allowed to be used as mere tools of injustice, deception and duplicity to subvert and suppress the truth, instead of repositories of judicial power whose judges are sworn and committed to render impartial justice to all alike who seek the enforcement or protection of a right or the prevention or redress of a wrong, without fear or favor and removed from the pressures of politics and prejudice. More so, in the case at bar where the people and the world are entitled to know the truth, and the integrity of our judicial system is at stake. In life, as an accused before the military tribunal Ninoy had pleaded in vain that as a civilian he was entitled to due process of law and trial in the regular civil courts before an impartial court with an unbiased prosecutor. In death, Ninoy, as the victim of the "treacherous and vicious assassination" and the relatives and sovereign people as the aggrieved parties plead once more for due process of law and a retrial before an impartial court with an unbiased prosecutor. The Court is constrained to declare the sham trial a mock trial -- the non-trial of the century -- and that the predetermined judgment of acquittal was unlawful and void ab initio.

1. No double jeopardy. -- It is settled doctrine that double jeopardy cannot be invoked against this Court's setting aside of the trial courts' judgment of dismissal or acquittal where the prosecution which represents the sovereign people in criminal cases is denied due process. As the Court stressed in the 1985 case of *People vs. Bocar*,

Where the prosecution is deprived of a fair opportunity to prosecute and prove its case, its right to due process is thereby violated.

The cardinal precept is that where there is a violation of basic constitutional rights, courts are ousted of their jurisdiction. Thus, the violation of the State's right to due process raises a serious jurisdictional issue (*Gumabon vs. Director of the Bureau of Prisons*, L-30026, 37 SCRA 420 [Jan. 30, 1971]) which cannot be glossed over or disregarded at will. Where the denial of the fundamental right of due process is apparent, a decision rendered in disregard of that right is void for lack of jurisdiction (*Aducayen vs. Flores*, L-30370 [May 25, 1973], 51 SCRA 78; *Shell Co. vs. Enage*, L-30111-12, 49 SCRA 416 Feb. 27, 1973). Any judgment or decision rendered notwithstanding such violation may be regarded as a "lawless thing, which can be treated as an outlaw and slain at sight, or ignored wherever it exhibits its head" (*Aducayen vs. Flores*, supra).

Respondent Judge's dismissal order dated July 7, 1967 being null and void for lack of jurisdiction, the same does not constitute a proper basis for a claim of double jeopardy (*Serino vs. Zosa*, supra).

xxx xxx xxx

Legal jeopardy attaches only (a) upon a valid indictment, (b) before a competent court, (c) after arraignment, (d) a valid plea having been entered; and (e) the case was dismissed or otherwise terminated without the express consent of the accused (*People vs. Ylagan*, 58 Phil. 851). The lower court was not competent as it was ousted of its jurisdiction when it violated the right of the prosecution to due process.

In effect, the first jeopardy was never terminated, and the remand of the criminal case for further hearing and/or trial before the lower courts amounts merely to a continuation of the first jeopardy, and does not expose the accused to a second jeopardy.

Another exception is when the trial court commits grave abuse of discretion in dismissing a criminal case by granting the accused's demurrer to evidence. In point is the fairly recent case of *People v. Uy*, [23] which involved the trial court's decision which granted the two separate demurrers to evidence filed by the two accused therein, both with leave of court, resulting in their acquittal of their respective charges of murder due to insufficiency of evidence. In resolving the petition for certiorari filed directly with this Court, we had the occasion to explain:

The general rule in this jurisdiction is that a judgment of acquittal is final and unappealable. *People v. Court of Appeals* explains the rationale of this rule:

In our jurisdiction, the finality-of-acquittal doctrine as a safeguard against double jeopardy faithfully adheres to the principle first enunciated in *Kepner v. United States*. In this case, verdicts of acquittal are to be regarded as absolutely final and irreviewable. The cases of *United States v. Yam Tung Way*, *People v. Bringas*, *Gandicela v. Lutero*, *People v. Cabarles*, *People v. Bao*, to name a few, are illustrative cases. The fundamental philosophy behind the constitutional proscription against double jeopardy is to afford the defendant, who has been acquitted, final repose and safeguard him from government oppression through the abuse of criminal processes. As succinctly observed in *Green v. United States* (t)he underlying idea, one that is deeply ingrained in at least the Anglo- American system of jurisprudence, is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent, he may be found guilty. (Underscoring supplied)

The same rule applies in criminal cases where a demurrer to evidence is granted. As held in the case of *People v. Sandiganbayan*:

The demurrer to evidence in criminal cases, such as the one at bar, is " filed after the prosecution had rested its case," and when the same is granted, it calls "for an appreciation of the evidence adduced by the prosecution and its sufficiency to warrant conviction beyond reasonable doubt, resulting in a dismissal of the case on the merits, tantamount to an acquittal of the accused." Such dismissal of a criminal case by the grant of demurrer to evidence may not be appealed, for to do so would be to place the accused in double-jeopardy. The verdict being one of acquittal, the case ends there. (*Italics in the original*)

Like any other rule, however, the above-said rule is not absolute. By way of exception, a judgment of acquittal in a criminal case may be assailed in a petition for certiorari under Rule 65 of the Rules of Court upon a clear showing by the petitioner that the lower court, in acquitting the accused, committed not merely reversible errors of judgment but also grave abuse of discretion amounting to lack or excess of jurisdiction or a denial of due process, thus rendering the assailed judgment void. (*Emphasis supplied.*)

In *Sanvicente v. People*,^[24] the Court allowed the review of a decision of the Court of Appeals (CA) which reversed the accused's acquittal upon demurrer to evidence filed by the accused with leave of court, the CA ruling that the trial court committed grave abuse of discretion in preventing the prosecution from establishing the due execution and authenticity of certain letter marked therein as Exhibit "LL," which supposedly "positively identified therein petitioner as the perpetrator of the crime charged." The Court, in a petition for certiorari, sustained the CA's power to review the order granting the demurrer to evidence, explaining thus:

Under Rule 119, Section 23 of the Revised Rules of Criminal Procedure, as amended, the trial court may dismiss the action on the ground of insufficiency of evidence upon a demurrer to evidence filed by the accused with or without leave of court. In resolving accused's demurrer to evidence, the court is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or support a verdict of guilt."

The grant or denial of a demurrer to evidence is left to the sound discretion of the trial court and its ruling on the matter shall not be disturbed in the absence of a grave abuse of discretion. Significantly, once the court grants the demurrer, such order amounts to an acquittal and any further prosecution of the accused would violate the constitutional proscription on double jeopardy. This constitutes an exception to the rule that the dismissal of a criminal case made with the express consent of the accused or upon his own motion bars a plea of double jeopardy. The finality-of-acquittal rule was stressed thus in *People v. Velasco*:

The fundamental philosophy highlighting the finality of an acquittal by the trial court cuts deep into the "humanity of the laws and in jealous watchfulness over the rights of the citizens, when brought in unequal contest with the State xxx. Thus *Green* expressed the concern that "(t)he underlying idea, one that is deeply

ingrained in at least the Anglo-American system of jurisprudence, is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent, he may be found guilty."

It is axiomatic that on the basis of humanity, fairness and justice, an acquitted defendant is entitled to the right of repose as a direct consequence of the finality of his acquittal. The philosophy underlying this rule establishing the absolute nature of acquittals is "part of the paramount importance criminal justice system attaches to the protection of the innocent against wrongful conviction." The interest in the finality-of- acquittal rule, confined exclusively to verdicts of not guilty, is easy to understand: it is a need for "repose", a desire to know the exact extent of one's liability. With this right of repose, the criminal justice system has built in a protection to insure that the innocent, even those whose innocence rests upon a jury's leniency, will not be found guilty in a subsequent proceeding.

Given the far-reaching scope of an accused's right against double jeopardy, even an appeal based on an alleged misappreciation of evidence will not lie. The only instance when double jeopardy will not attach is when the trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction, such as where the prosecution was denied the opportunity to present its case or where the trial was a sham. However, while certiorari may be availed of to correct an erroneous acquittal, the petitioner in such an extraordinary proceeding must clearly demonstrate that the trial court blatantly abused its authority to a point so grave as to deprive it of its very power to dispense justice. (Emphasis supplied.)

By this time, it is settled that the appellate court may review dismissal orders of trial courts granting an accused's demurrer to evidence. This may be done via the special civil action of certiorari under Rule 65 based on the ground of grave abuse of discretion, amounting to lack or excess of jurisdiction. Such dismissal order, being considered void judgment, does not result in jeopardy. Thus, when the order of dismissal is annulled or set aside by an appellate court in an original special civil action via certiorari, the right of the accused against double jeopardy is not violated.

Unfortunately, what petitioner People of the Philippines, through then Secretary of Justice Teofisto T. Guingona, Jr. and then Solicitor General Silvestre H. Bello, III, filed with the Court in the present case is an appeal by way of a petition for review on certiorari under Rule 45 raising a pure question of law, which is different from a petition for certiorari under Rule 65.

In *Madrigal Transport Inc. v. Lapanday Holdings Corporation*,^[25] we have enumerated the distinction between the two remedies/actions, to wit:

Appeal and Certiorari Distinguished

Between an appeal and a petition for certiorari, there are substantial distinctions which shall be explained below.

As to the Purpose. Certiorari is a remedy designed for the correction of errors of jurisdiction, not errors of judgment. In *Pure Foods Corporation v. NLRC*, we explained the simple reason for the rule in this light:

"When a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being exercised when the error is committed. If it did, every error committed by a court would deprive it of its jurisdiction and every erroneous judgment would be a void judgment. This cannot be allowed. The administration of justice would not survive such a rule. Consequently, an error of judgment that the court may commit in the exercise of its jurisdiction is not correct[able] through the original civil action of certiorari."

The supervisory jurisdiction of a court over the issuance of a writ of certiorari cannot be exercised for the purpose of reviewing the intrinsic correctness of a judgment of the lower court -- on the basis either of the law or the facts

of the case, or of the wisdom or legal soundness of the decision. Even if the findings of the court are incorrect, as long as it has jurisdiction over the case, such correction is normally beyond the province of certiorari. Where the error is not one of jurisdiction, but of an error of law or fact -- a mistake of judgment -- appeal is the remedy.

As to the Manner of Filing. Over an appeal, the CA exercises its appellate jurisdiction and power of review. Over a certiorari, the higher court uses its original jurisdiction in accordance with its power of control and supervision over the proceedings of lower courts. An appeal is thus a continuation of the original suit, while a petition for certiorari is an original and independent action that was not part of the trial that had resulted in the rendition of the judgment or order complained of. The parties to an appeal are the original parties to the action. In contrast, the parties to a petition for certiorari are the aggrieved party (who thereby becomes the petitioner) against the lower court or quasi-judicial agency, and the prevailing parties (the public and the private respondents, respectively).

As to the Subject Matter. Only judgments or final orders and those that the Rules of Court so declared are appealable. Since the issue is jurisdiction, an original action for certiorari may be directed against an interlocutory order of the lower court prior to an appeal from the judgment; or where there is no appeal or any plain, speedy or adequate remedy.

As to the Period of Filing. Ordinary appeals should be filed within fifteen days from the notice of judgment or final order appealed from. Where a record on appeal is required, the appellant must file a notice of appeal and a record on appeal within thirty days from the said notice of judgment or final order. A petition for review should be filed and served within fifteen days from the notice of denial of the decision, or of the petitioner's timely filed motion for new trial or motion for reconsideration. In an appeal by certiorari, the petition should be filed also within fifteen days from the notice of judgment or final order, or of the denial of the petitioner's motion for new trial or motion for reconsideration.

On the other hand, a petition for certiorari should be filed not later than sixty days from the notice of judgment, order, or resolution. If a motion for new trial or motion for reconsideration was timely filed, the period shall be counted from the denial of the motion.

As to the Need for a Motion for Reconsideration. A motion for reconsideration is generally required prior to the filing of a petition for certiorari, in order to afford the tribunal an opportunity to correct the alleged errors. Note also that this motion is a plain and adequate remedy expressly available under the law. Such motion is not required before appealing a judgment or final order.

Also in *Madrigal*, we stressed that the special civil action of certiorari and appeal are two different remedies mutually exclusive; they are neither alternative nor successive. Where appeal is available, certiorari will not prosper. In the dismissal of a criminal case upon demurrer to evidence, appeal is not available as such an appeal will put the accused in double jeopardy. Certiorari, however, is allowed.

For being the wrong remedy taken by petitioner *People of the Philippines* in this case, this petition is outrightly dismissible. The Court cannot reverse the assailed dismissal order of the trial court by appeal without violating private respondent's right against double jeopardy.

Even assuming that the Court may treat an "appeal" as a special civil action of certiorari, which definitely this Court has the power to do, when there is a clear showing of grave abuse of discretion committed by the lower court, the instant petition will nevertheless fail on the merits as the succeeding discussion will show.

There are actually two (2) acts involved in this case, namely, the warrantless arrest and the warrantless search. There is no question that warrantless search may be conducted as an incident to a valid warrantless arrest. The law requires that there be first a lawful arrest before a search can be made; the process cannot be reversed.[26]

However, if there are valid reasons to conduct lawful search and seizure which thereafter shows that the accused is currently committing a crime, the accused may be lawfully arrested in flagrante delicto[27] without need for a warrant of arrest. Finding that the warrantless arrest preceded the warrantless search in the case at bar, the trial court granted private respondent's demurrer to evidence and acquitted him of all the three charges for lack of evidence, because the unlawful arrest resulted in the inadmissibility of the evidence gathered from an invalid warrantless search. The trial court's ratiocination is quoted as follows:

The threshold issue raised by the accused in his Demurrer to Evidence is whether his warrantless arrest and search were lawful as argued by the prosecution, or unlawful as asserted by the defense.

Under Section 5, Rule 113 of the New Rules of Court, a peace officer may arrest a person without a warrant: (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 personal knowledge of facts indicating 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 being transferred from one confinement to another. None of these circumstances were present when the accused was arrested. The accused was merely walking from the Maria Orosa Apartment and was about to enter the parked BMW car when the police officers arrested and frisked him and searched his car. The accused was not committing any visible offense at the time of his arrest. Neither was there an indication that he was about to commit a crime or that he had just committed an offense. The unlicensed AMT Cal.380 9mm Automatic Back-up Pistol that the accused had in his possession was concealed inside the right front pocket of his pants. And the handgun was bantam and slim in size that it would not give an outward indication of a concealed gun if placed inside the pant's side pocket as was done by the accused. The arresting officers had no information and knowledge that the accused was carrying an unlicensed handgun, nor did they see him in possession thereof immediately prior to his arrest.

Ditto on the 32 bags of shabu and the other unlicensed Daewoo Cal. 9mm Pistol with magazine that were found and seized from the car. The contraband items in the car were not in plain view. The 32 bags of shabu were in the trunk compartment, and the Daewoo handgun was underneath the driver's seat of the car. The police officers had no information, or knowledge that the banned articles were inside the car, or that the accused had placed them there. The police officers searched the car on mere suspicion that there was shabu therein.

On this matter, pertinent portions of the testimonies of Police Inspector Cielito Coronel and SP03 Reynaldo are hereunder quoted:

Q. Mr. Witness, what was your role or participation in this case?

A. I am one of those responsible for the arrest of the accused.

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Q. Where did you make that arrest, Mr. Witness?

A. The apprehension was made in front of an apartment along Maria Orosa Street, Ermita, Manila.

Q. What date was that when you arrested the accused?

A. It was on May 17, 1996, at about 2:10 a.m.

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Q. What was the reason why you together with other policemen effected the arrest of the accused?

A.

We arrested him because of the information relayed to us by one of those whom we have previously apprehended in connection with the delivery of shabu somewhere also in Ermita, Manila.

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Q. When you established that he was somewhere at Maria Orosa, what did you do?

A. We waited for him.

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Q. You yourself, Mr. Witness, where did you position yourself during that time?

A. I was inside a vehicle waiting for the accused to appear.

Q. What about your other companions where were they?

A. They were position in strategic places within the area.

Q. What happened when you and your companions were positioned in that place?

A. That was when the accused arrived.

Q. How many of your approached him.

A. Inspector Margallo, myself and two other operatives.

Q. What happened when you approached the accused, Mr. Witness?

A. We introduced ourselves as police officers and we frisked him and we asked him to open the back compartment of his car.

Q. You said you frisked him, what was the result of that?

A. He was found in possession of one back-up pistol with one loaded magazine and likewise when the compartment was opened several plastic bags containing white crystalline substance suspected to be shabu (were found).

Q. What did you do when you found out Mr. Witness?

A. When the car was further search we later found another firearm, a Daewoo Pistol at the place under the seat of the driver.

Q. Then what happened?

A. He was brought to our headquarters at Mandaluyong for further investigation.

Q. What about the suspected shabu that you recovered, what did you do with that?

A. The suspected shabu that we recovered were forwarded to the NBI for laboratory examination.

Q. Did you come to know the results?

A. It was found positive for methamphetamine hydrochloride. (TSN, pp. 3-8, November 15, 1996).

ATTY. LOZANO TO WITNESS: CROSS

Q.

You arrested Joseph Junio and Redentor Teck for alleged transporting of shabu on May 16, 1996, at 11:00

p.m., is it not?

A. Yes, Sir.

Q. You asked Redentor Teck where he is employed, is it not?

A. Yes, Sir.

xxx xxx xxx

Q. Redentor Teck told you that he is a talent manager at the Glenmore Modeling Agency, is it not?

A. Yes, Sir.

Q. The Glenmore Modeling Agency is owned by Lawrence Wang, is it not?

A. I supposed, Sir.

Q.

And that is why immediately after Redentor Teck told you that he is an employee of the Glenmore Modeling Agency owned by Lawrence Wang, naturally, you and your companions look for Lawrence Wang to shed light on the transporting of shabu by Redentor Teck and Joseph Junio, is it not?

A. Yes, Sir.

Q. Thereafter, you spotted a person previously described by Redentor Teck as Lawrence Wang, is it not?

A. Yes, Sir.

Q.

While you were arresting Lawrence Wang, your companions at the same time searched the BMW car described in your affidavit of arrest, is it not?

A. Yes, Sir.

xxx xxx xxx

Q. Lawrence Wang was not inside the BMW car while the same was searched, is it not?

A. He was outside, Sir.

Q. The driver of the car was inside the car when the arrest and search were made, is it not?

A. He was likewise outside, Sir.

Q. Lawrence Wang did resist arrest and search is it not?

A. Yes, Sir.

Q. When you effected the arrest, there was no warrant of arrest, is it not?

A. Yes, Sir.

Q. When the search was made on the BMW car, there was no search warrant, is it not?

A. Yes, none, Sir. (TSN, pp. 3-12, November 15, 1996)

SPO3 REYNALDO CRISTOBAL'S TESTIMONY
PROSECUTOR TO WITNESS: DIRECT EXAMINATION

Q. What is your role or participation in this case?

A. I was one of the arresting officers and investigator, Sir.

xxx xxx xxx

Q. What kind of specific offense did the accused allegedly do so that you arrested him, Mr. Witness?

A. He was arrested on the basis of the recovered drugs in his possession placed inside his car.

xxx xxx xxx

Q.

Mr. witness, you said that you recovered drug from the car of the accused, please tell us the antecedent circumstances which led you to recover or confiscate these items?

A.

Earlier in the evening about 11:00 p.m. of May 16, we arrested one Redentor Teck and Joseph Junio.

COURT: Where did you arrest these people?

A. They were arrested in Metro Manila also.

COURT: The same date?

A.

May 16, about 11:00 p.m. They were arrested and when they were investigated, Teck mentioned the name of Lawrence Wang as his employer.

COURT: Why were these people, arrested?

A. For violation of R.A. 6425.

COURT: How were they arrested?

A.

They were arrested while in the act of transporting shabu or handling shabu to another previously arrested person. It was a series of arrest.

COURT: So, this involved a series of operation?

A.

Yes, Your Honor. About 11:00 p.m. of May 16, we arrested three (3) persons, SPO2 Vergel de Dios, a certain Arellano and a certain Rogelio Noble. When they were arrested they divulged the name of the source.

COURT: They were arrested for what, for possession?

A.

Yes, Your Honor. For unlawful possession of shabu. Then they divulged to us the name of the person from whom they get shabu.

COURT: Whose name did they mention:

A.

One Alias Frank, who turned out to be Redentor Teck and Joseph Junio. We let them call Redentor Teck and Joseph Junio thru the cellphone and pretend and to order another supply of shabu.

COURT: So there was an entrapment?

A. Yes, Your Honor.

COURT: So, these two (2) were arrested?

A. While they were about to hand over another bag of shabu to Noble and company.

COURT: And these two reveals (revealed) some information to you as to the source of the shabu?

A. Yes, Your Honor.

COURT: What was the information?

A. Teck told us that he is an employee of Lawrence Wang.

COURT: What did you do when you were told about that?

A. They also told us that there was an ongoing delivery of shabu on that morning.

COURT: When?

A. Of that date early morning of May 17, 1996.

COURT: At what place?

A.

We asked them where we could find Lawrence Wang and Teck lead us to Maria Orosa Apartment where we conducted a stake out which lasted up to 2:00 a.m.

xxx xxx xxx

COURT: What happened during the stake out?

A. When the person of the accused was identified to us, we saw him opening his car together with his driver.

COURT: So, he was about to leave when you saw him?

A.

Probably, Sir.

COURT: What did you do?

A. We saw him opened his car and we have a suspicion that there was a shabu inside the compartment of the car.

xxx xxx xxx

COURT: All right, when you saw the accused opened his car, what did you do?

A. We approached him.

COURT: What happened when you approached him?

A. We suspected the shabu inside the compartment of his car.

COURT: And this shabu that you saw inside the compartment of the car, what did you do with that?

A.

Well, he was first arrested by Captain Margallo and Lt. Coronel while I was the one who inspected and opened the compartment of the car and saw the shabu. (TSN, pp. 15-24, December 16, 1996).

CLARIFICATORY QUESTIONING OF SPO3 CRISTOBAL BY THE COURT

COURT:

From your testimony and that of Police Inspector Cielito Coronel, this Court has gathered that prior to the arrest of the accused there were three (3) men that your team arrested. One of whom is a police officer.

A: Yes, Sir.

xxx xxx xxx

COURT: And on the occasion of the arrest of these three men shabu were confiscated from them?

A: Yes, Sir.

Q:

And in the course of the investigation of these three men, you were able to discover that Redentor Teck and Joseph Junio were the source of the regulated drug that were confiscated from the three men that you have arrested?

A: Yes, Sir.

Q:

Now, thru entrapment base[d] on your testimony you were able to apprehend also these two men, Redentor Teck and Joseph Junio?

A: Yes, Sir.

xxx xxx xxx

Q: These two men, Redentor Teck and Joseph Junio they were also investigated by your team?

A: Yes, Sir.

Q: You were present while they were investigated?

A: I was the one whom investigated them.

xxx xxx xxx

Q:

Did you ask Redentor and Joseph the source of shabu that you confiscated from them at the time of the (their) arrest?

A:

Yes, Sir. They refuse to say the source, however, they told me that they were working for the accused.

Q:

You also testified that Redentor informed you that there was another delivery of shabu scheduled that morning of (stop) was it May 16 or 17? The other delivery that is scheduled on?

A: On the 17[th.]

xxx xxx xxx

A: No, Sir.

xxx xxx xxx

Q:

At that time when you decided to look for the accused to ask him to shed light on the matter concerning the arrest of these two employees in possession of shabu. Did you and did your team suspect the accused as being involved in the transaction that lead (led) to the arrest of Redentor and Joseph?

A: Yes, Sir. We suspected that he was the source of the shabu.

xxx xxx xxx

Q: When you saw the accused walking towards his car, did you know whether he was carrying a gun?

A:

No, Sir. It cannot be seen.

Q: It was concealed?

A: Yes, Sir.

Q:

So, the only time that you and your team learned that he was in possession of the gun is when he was bodily search?

A: Yes, Sir. That is the only time that I came to know about when Capt. Margallo handed to me the gun.

Q: Other than walking towards his car, the accused was not doing anything else?

A: None, Sir.

Q: That would invite your suspicion or give indication that he was intending to do something unlawful or illegal?

A: No, Sir.

Q: When you searched the car, did the accused protest or try to prevent your team from searching his car?

A: No, Sir." (TSN pp. 3-16, Feb. 26, 1997)

Clearly therefore, the warrantless arrest of the accused and the search of his person and the car were without probable cause and could not be licit. The arrest of the accused did not fall under any of the exception to the requirements of warrantless arrests, (Sec. 5, Rule 113, Rules of Court) and is therefore, unlawful and derogatory of his constitutional right of liberty. xx x123

The trial court resolved the case on the basis of its findings that the arrest preceded the search, and finding no basis to rule in favor of a lawful arrest, it ruled that the incidental search is likewise unlawful. Any and all pieces of evidence acquired as a consequence thereof are inadmissible in evidence. Thus, the trial court

dismissed the case for lack of evidence.

Contrary to its position at the trial court, the People, however, now posits that "inasmuch as it has been shown in the present case that the seizure without warrant of the regulated drugs and unlicensed firearms in the accused's possession had been validly made upon probable cause and under exigent circumstances, then the warrantless arrest of the accused must necessarily have to be regarded as having been made on the occasion of the commission of the crime in flagrante delicto, and therefore constitutionally and statutorily permissible and lawful." [28] In effect, the People now contends that the warrantless search preceded the warrantless arrest. Since the case falls under an exception to the general rule requiring search warrant prior to a valid search and seizure, the police officers were justified in requiring the private respondent to open his BMW car's trunk to see if he was carrying illegal drugs.

The conflicting versions as to whether the arrest preceded the search or vice versa, is a matter of credibility of evidence. It entails appreciation of evidence, which may be done in an appeal of a criminal case because the entire case is thrown open for review, but not in the case of a petition for certiorari where the factual findings of the trial court are binding upon the Court. Since a dismissal order consequent to a demurrer to evidence is not subject to appeal and reviewable only by certiorari, the factual finding that the arrest preceded the search is conclusive upon this Court. The only legal basis for this Court to possibly reverse and set aside the dismissal order of the trial court upon demurrer to evidence would be if the trial court committed grave abuse of discretion in excess of jurisdiction when it ruled that there was no legal basis to lawfully effect a warrantless arrest.

The pertinent provisions of Rule 113 of the Rules on Criminal Procedure on warrantless arrest provide:

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.

Section 5, above, provides three (3) instances when warrantless arrest may be lawfully effected: (a) arrest of a suspect in flagrante delicto; (b) arrest of a suspect where, based on personal knowledge of the arresting officer, there is probable cause that said suspect was the author of a crime which had just been committed; (c) arrest of a prisoner who has escaped from custody serving final judgment or temporarily confined while his case is pending.

For a warrantless arrest of an accused caught in flagrante delicto under paragraph (a) of Section 5 to be valid, two requisites 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. [29]

The facts and circumstances surrounding the present case did not manifest any suspicious behavior on the part of private respondent Lawrence Wang that would reasonably invite the attention of the police. He was merely walking from the Maria Orosa Apartment and was about to enter the parked BMW car when the police operatives arrested him, frisked and searched his person and commanded him to open the compartment of the car, which was later on found to be owned by his friend, David Lee. He was not committing any visible offense then. Therefore, there can be no valid warrantless arrest in flagrante delicto under paragraph (a) of Section 5. It is settled that

"reliable information" alone, absent any overt act indicative of a felonious enterprise in the presence and within the view of the arresting officers, is not sufficient to constitute probable cause that would justify an in flagrante delicto arrest. [30]

Neither may the warrantless arrest be justified under paragraph (b) of Section 5. What is clearly established from the testimonies of the arresting officers is that Wang was arrested mainly on the information that he was the employer of Redentor Teck and Joseph Junio who were previously arrested and charged for illegal transport of shabu. Teck and Junio did not even categorically identify Wang to be their source of the shabu they were caught with in flagrante delicto. Upon the duo's declaration that there will be a delivery of shabu on the early morning of the following day, May 17, which is only a few hours thereafter, and that Wang may be found in Maria Orosa Apartment along Maria Orosa Street, the arresting officers conducted "surveillance" operation in front of said apartment, hoping to find a person which will match the description of one Lawrence Wang, the employer of Teck and Junio. These circumstances do not sufficiently establish the existence of probable cause based on personal knowledge as required in paragraph (b) of Section 5.

And doubtless, the warrantless arrest does not fall under paragraph (c) of Section 5.

The inevitable conclusion, as correctly made by the trial court, is that the warrantless arrest was illegal. Ipso jure, the warrantless search incidental to the illegal arrest is likewise unlawful.

In *People v. Aminnudin*, [31] the Court declared as inadmissible in evidence the marijuana found in appellant's possession during a search without a warrant, because it had been illegally seized, in disregard of the Bill of Rights:

In the case at bar, the accused-appellant was not, at the moment of his arrest, committing a crime nor was it shown that he was about to do so or that he had just done so. What he was doing was descending the gangplank of the M/V Wilcon 9 and there was no outward indication that called for his arrest. To all appearances, he was like any of the other passengers innocently disembarking from the vessel. It was only when the informer pointed to him as the carrier of the marijuana that he suddenly became a suspect and so subject to apprehension. It was the fugitive finger that triggered his arrest. The identification of the informer was the probable cause as determined by the officer (and not a judge) that authorized them to pounce upon Aminnudin and immediately arrest him.

The People's contention that Wang waived his right against unreasonable search and seizure has no factual basis. While we agree in principle that consent will validate an otherwise illegal search, however, based on the evidence on record, Wang resisted his arrest and the search on his person and belongings. [32] The implied acquiescence to the search, if there was any, could not have been more than mere passive conformity given under intimidating or coercive circumstances and is thus considered no consent at all within the purview of the constitutional guarantee. [33] Moreover, the continuing objection to the validity of the warrantless arrest made of record during the arraignment bolsters Wang's claim that he resisted the warrantless arrest and search.

We cannot close this ponencia without a word of caution: those who are supposed to enforce the law are not justified in disregarding the rights of the individual in the name of order. Order is too high a price for the loss of liberty. As Justice Holmes once said, "I think it is less evil that some criminals should escape than that the government should play an ignoble part." It is simply not allowed in free society to violate a law to enforce another, especially if the law violated is the Constitution itself. [34]

WHEREFORE, the instant petition is DENIED.

SO ORDERED.

Puno,C.J., (Chairperson), Sandoval-Gutierrez, Corona, and Azcuna., JJ., concur.

[1] Penned by Judge Perfecto A.S. Laguio, Jr.; Annex "A" of the petition, Rollo, pp. 41-55.

[2] RTC records, p. 2.

[3] Id. at
3.

[4] Id. at
4.

[5] Id. at 36.

[6] TSN, February 26, 1997, p. 6.

[7] TSN, November 15, 1996, p. 7.

[8] Id. at 11.

[9] RTC records, p. 45.

[10] Id. at 47-49.

[11] Id. at 51-76.

[12] Id. at 78-85.

[13] Id. at 109-115.

[14] Original Record, pp. 135-149.

[15] Rollo, pp. 8-38.

[16] Id. at 57.

[17] Id. at 58-60.

[18] Id. at 181.

[19] Id. at 316-337.

[20] Id. at 353.

[21] G.R. No. L-31018, June 29, 1973, 51 SCRA 349.

[22] G.R. No. L-72670, September 12, 1986, 144 SCRA 43.

[23] G.R. No. 158157, September 30, 2005, 471 SCRA 668.

[24] 441 Phil. 139 (2002).

[25] G.R. No. 156067, August 11, 2004, 436 SCRA 123.

[26] *Malacat v. Court of Appeals*, G.R. No. 123595, December 12, 1997, 283 SCRA 159.

[27] *People v. Claudio*, G.R. No. L-72564, April 15, 1988, 160 SCRA 646.

[28] Petition, p. 21; Rollo, p. 23.

[29] Supra, citing the Concurring Opinion of then Justice, later Chief Justice Artemio V. Panganiban in *People v. Doria*, supra.

[30] *People v. Binad Sy Chua*, 444 Phil. 757 (2003), citing *People v. Molina*, G.R. No. 133917, February 19, 2001, 352 SCRA 174.

[31] G.R. No. L-74869, July 6, 1988, 163 SCRA 402.

[32] TSN, November 15, 1996, p. 11 and December 6, 1995, p. 24.

[33] *People v. Compacion*, 414 Phil. 68 (2001).

[34] Supra note 32, at 411.

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