CASE ANALYSIS

UMIL v. RAMOS: SUSPICION ARRESTS AND THE RULE OF LAW*

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I. INTRODUCTORY REMARKS

I am delighted to participate in this auspicious first roundtable gathering to subject significant decisions of the Supreme Court to critical analyses, despite my initial hesitance arising from the rather short notice that was given to me. In fact, I was given by our moderator a xerox copy of the decision only two days ago. And, I suppose I should confess that I had by that time, already read the views of some newspaper columnists and readers of how bad and dangerous this decision is. I can assure you, however, that I have tried not to allow their opinions to color the view that I am going to discuss with you this afternoon.

The rationale for this exercise is:

> A court which is final and unreviewable, needs more careful scrutiny than any other. Unreviewable power is the most likely to self-indulge itself and the least likely to engage in dispassionate self-analysis. No public institution, or the people who operate it, can be above public debate.

It is in the spirit of the foregoing rationale that I hope our ensuing discussions of the case being analyzed will be given.

II. CASE ANALYSIS

This is a consolidated decision of eight petitions for *habeas corpus* that were joined together by reason of the admitted similarity of the basic issue that has been raised, namely, the validity of the warrantless arrests

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of the respective petitioners. A holding that their arrests were illegal, would render invalid the criminal informations that were filed against them under section 7, Rule 112 of the 1985 Rules on Criminal Procedure without any preliminary investigation having been conducted. As a consequence, the invalidly filed informations would not confer jurisdiction upon the court to try the accused charged therein.

III. PRELIMINARY ISSUES

There are four preliminary issues that I wish to raise before proceeding to make my comments. Each one of them cuts across all eight of these consolidated petitions and, therefore, presents issues that are common to all of them.

A.

The first issue relates to the wisdom of consolidating cases the acts of which are so divergent from each other despite the singularity of the ultimate issue related to the validity of the warrantless arrest that they commonly raise. Thus, the warrantless arrest for two separate murder charges have been consolidated with a similar arrest for inciting to sedition along with illegal possession of firearms and ammunition and subversive documents. I am convinced that the greater interests of justice would have been much better served by a full, elaborated decision for each disparate situation. This conclusion becomes more persuasive when considered with the maxim that law arises from facts.

As it is, the suspicion cannot be escaped that the decision to lump together all these different cases was made on the basis of a prior decision to deny all these petitions. If this is correct, it must be deplored as a cavalier way of treating cases the ruling of which so greatly affects the civil liberties that in prior decisions it had expressed so much concern for.

B.

The second preliminary issue is the questionable doctrine that filing bail moots a petition for *habeas corpus*.

In *Umil v. Ramos*,[1] petitioners *Umil* and *Villanueva*, posted bail while the petition was pending. Following earlier precedents, the Supreme Court dismissed the petition for *habeas corpus* on the ground that, having secured their provisional liberty on bail, the petition has become moot and academic as to them.

On this matter, our Office of Legal Aid has filed a petition that has long been pending in the Supreme Court, squarely asking it to abandon, overrule, and set aside this highly questionable doctrine that has caused the dismissal of *Umil's* petition for *habeas corpus*. A summary of the arguments that we raised, I believe, is relevant to and useful for our discussion.

1. The constitutional right to bail and to *habeas corpus*, that great writ of liberty, are separate and independent rights. This separation was stressed by the 1987 Constitution[2] which clearly provides that "the right to bail shall not be impaired even when the privilege of the writ of *habeas corpus* is suspended." The obverse side to this statement is that the posting of bail should similarly not affect the petition for *habeas corpus*. This must be so since "*the court, in granting bail to an accused or suspect, does not pass upon the legality of the questioned arrest and detention.*"[3]

2. No precise, cost or condition can be validly imposed upon the exercise of a constitutional right. The assailed doctrine precisely gives that impermissible effect because it requires a petitioner to stay in jail and bear the degrading and often inhuman conditions therein so that the issue he raised on the illegality of his detention will be passed upon. Such a doctrine calls for an unrealistic sacrifice to be made.

3. The assailed doctrine deprives the court of opportunities to rule upon questionable arrests and detention, thereby curtailing the exercise of its educative function to guide official conduct in this area. The interests of sound administration of justice require the more frequent exercise of this

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[1]G.R. No. L-81567.

[2]CONST., art. III, sec. 13. "All persons, except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong, shall, before conviction, be bail able by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of *habeas corpus* is suspended. Excessive bail shall not be required."

[3]Nava v. Gatmaitan, 90 Phil. 172 (1951).

important function of the high court through well-reasoned and convincing decisions.

4. Implied waiver of constitutional rights, which is one of the bases of the questioned doctrine, is questionable for not being informed and voluntary. Waiver has been defined as the intentional and deliberate relinquishment or abandonment of a known right or privilege. Since no warning has been given of the totally surprising consequence of posting bail, waiver cannot be intelligently made. Further, it cannot be free because it is an *imposed consequence* of exercising the petitioner's right to bail.

5. In *People v. Burgos*,[4] it was has held that "courts indulge every reasonable presumption against waiver of fundamental rights and we do not presume acquiescence in the loss of fundamental rights."

6. The release on bail is not the unconditional release that makes a petition for *habeas corpus* moot and academic. Thus, the petitioner's release on parole did not render moot his petition for *habeas corpus*, as held in *John Jones v. Cunningham*.[5] The test for restraint of liberty as a ground for *habeas corpus* is whether petitioner is free to go when and where he pleases. Certainly, the petitioners' provisional liberty on bail does not pass the test.

C.

The third issue relates to the questionable holding in the consolidated decision that the *filing of a criminal information disallows the writ*, citing section 4, Rule 102 which provides that

> [i]f it appears that the person alleged to be restrained of his liberty is in the custody of an officer *under process issued by a court*...the writ shall not be allowed.

The drafting and filing of a criminal information is the exclusive official act of the public prosecutor. Such act is done without judicial intervention of any kind. It is, therefore, mystifying how the high court arrived at its conclusion that the filing of the information is included in the phrase "under process issued by a court."

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[4]G.R. No. 68955, 144 SCRA 1 (1986).

[5]371 U.S. 236 (1963).

Such a questionable holding under *Umil* directly contravenes the landmark cases of *Lino v. Fugoso*[6] and *Sayo v. Chief of Police.*[7] In those earlier cases, it was held that the detention of a person arrested without a warrant becomes illegal upon the expiration of the periods delimited by Article 125 of the Revised Penal Code. The fiscal is "powerless to validate such illegal detention by merely filing an information or by any order of his own, express or implied." "Only an order of commitment (issued by a judge) could legalize the prisoner's continued confinement." *Lino* then concluded that since the above-cited provision does not allow the writ where the petitioner is in the custody of an officer under process issued by a court, a *contrario sensui,* "if there is no order of commitment or detention, the writ shall be disallowed."

In all the eight petitions, there is no claim by the respondents that, at the time they were filed, there was already an order of commitment or detention issued by the court. *The danger to civil liberty is clear. The fiscal, who is an integral part of the law enforcement function of the Executive, can now easily render futile the writ of habeas corpus by merely filing a criminal information no matter how defective it may be.*

The Supreme Court further relied on the last sentence of section 4, Rule 102 that the writ shall not authorize "the discharge of a *person charged* with or convicted of an offense in the Philippines or of a person suffering imprisonment under *lawful judgment.* Such a literal reliance on a mere procedural rule of questionable validity does not do justice to the highest court of the land. Reliance should more appropriately be made upon applicable constitutional guarantees. What is most surprising, however, is that nowhere in the questioned decision is there any mention of the Constitution at all. This is dismaying.

As held in *Marcos v. Cruz,*[8] the mere filing of an information "does not raise a presumption of guilt or destroy the presumption of defendant's innocence." Even when a judgment of conviction has been rendered and the petitioner is already serving sentence for failure to prosecute his appeal, *habeas corpus* is still available to question the validity of said judgement on the ground that the petitioner's constitutional right has been violated.[9]

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[6]77 Phil. 973 (1947).

[7]80 Phil. 859 (1948).

[8]67 Phil. 82 (1939).

[9]Chavez v. Court of Appeals, G.R. No. L-29169, 24 SCRA 663 (1968).

D.

The fourth issue relates to what should be the proper focus of inquiry in a petition for *habeas corpus*. Jurisprudence, notably *Faye v. Noia*,[10] quoted with approval in Chavez and the procedural rules uphold the view that the inquiry should be concentrated on the legality or illegality of the arrest and detention of the petitioner. Whether or not he is guilty of the crime for which he is charged is irrelevant to or at best merely peripheral to the singular issue.

It must be borne in mind that the hearing in a *habeas corpus* petition is a *hearing on the return* under section 12, Rule 102. Under section 10 of the same rule, the officer is required to state in his return "*the authority and the true and whole cause*" of his detaining the petitioner. It is only when the petitioner is "in custody under a *warrant of commitment*" under section 13 that the officer's "return is considered *prima facie* evidence of the cause of restraint." Otherwise, the burden of proving the legality of detention rests on the government. If the judge or court "is satisfied that he (the petitioner) is unlawfully imprisoned or restrained, he shall forthwith order his discharge from confinement".[11]

It is thus clearly inferred from the foregoing cited provisions that the hearing is confined to the cause of petitioner's detention and not on his probable guilt or innocence of the crime he was arrested for and charged of.

In *Umil*, however, the Supreme Court's decision seemed to have been greatly influenced by the supposed admissions made by *Anonuevo* and *Caspile* that they are members of the standing committee of the NUFC. This exceeds the narrow focus of inquiry in *habeas corpus* petitions and even worse, as the dissenting opinion of Justice Sarmiento aptly points out, such reliance have "pronounced the petitioners guilty" and thereby effectively preempted the trial function of the court before which they are charged.

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[10]372 U.S. 391 (1963).

[11]RULES OF COURT, Rule 102, section 15.

UMIL V. RAMOS
(G.R. No. 81567, July 9, 1990)

Facts of the Case

The military was tipped off about a patient who was being treated for a gunshot wound at the St. Agnes Hospital along Roosevelt Avenue, Quezon City. Hospital records disclosed the patient's identity as Ronnie Javelon. However, the military suspected him to be Rolando Dural, a member of the NPA liquidation squad responsible for killing two soldiers the day before, on 31 January 1988. Thereupon, they took him into custody, transferring him to the CAPCOM Regional Medical Services. While confined therein, eyewitnesses to the killing identified him as the gunman who went on top of the hood of the CAPCOM mobile patrol car and fired at the soldiers seated therein.

The fiscal of Kalookan City conducted an inquest and there after filed an Information charging petitioner of "Double Murder with Assault upon Agents of Persons in Authority." No bail was recommended.

On 6 March 1988, a petition for *habeas corpus* was filed in the Supreme Court which heard the parties thereto on 15 February 1988. Apparently, no restraining order was issued so that the trial court continued with the hearing of the Murder charge. Within six months after the filing of the information, or on 17 August 1988, the Court convicted petitioner of the crime charged.

In contrast to the surprisingly speedy trial in the lower court, the Supreme Court took almost thirty months or about two and one-half years from the date of hearing on 15 February 1988 to decide the case on 9 July 1990. It must be noted that the 1987 Constitution gives the Supreme Court only twenty-four months from "date of submission" within which to decide a case.[12] This generally refers to ordinary cases. *Habeas corpus* petitions are given *preferential attention* as expressly stated in section 1, rule 22 of the Rules of Court. It may also be inferred from section 39 of Batas Pambansa Blg. 129 which provides that appeal from *habeas corpus* may be taken only within the very short period of forty-eight hours, in contrast to fifteen days in other cases. In fairness to the Supreme Court, however, it must be said that the decision does not state when the petition was submitted for decision

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[12]CONST. art. VIII, sec. 15.

and therefore, it cannot be determined whether the constitutional provision in question was violated or not. Nonetheless, the delay is most noteworthy considering its negative exemplarity arising from the fact that it occurred in the Supreme Court.

What must be commented on, however, is that it was questionable for the Supreme Court to utilize the lengthy delay as a further ground for denying the relief prayed for. Thus, it held that, since petitioners have been convicted of the crime charged, sentenced, and already serving sentence, "the writ of *habeas corpus* is no longer available to him.[13] The judicial doctrine that one is not permitted to take advantage of his own wrongdoing could be considered as applicable to this situation. This is, in a sense, similar to the Marcosian device of conditionally releasing a prisoner and praying that the *habeas corpus* petition filed in his behalf be dismissed for being moot and academic. That is at least better than the present device being resorted to, which is merely to file a criminal information in court. Under Marcos, a petitioner has the consolation of gaining his liberty, albeit temporarily. Under Umil, a petitioner is denied both his temporary liberty and a ruling on his petition questioning the legality of his detention.

Invalidity of Petitioner's Warrantless Arrest

The Supreme Court held that the warrantless arrest of petitioner *Dural* while he was a patient in the hospital does not fall under paragraph (a), section 5, Rule 113 of the 1985 Rules of Criminal Procedure, since "(i)t clearly appears that he was not arrested while in the act of shooting the 2 CAPCOM soldiers." Neither does the arrest fall under the paragraph (b) of the same section since he was arrested "a day after the shooting incident."[14]

Therefore, the Supreme Court held, (s)eemingly, his arrest without warrant is unjustified." "However," the Court went on, "Rolando Dural was arrested for being a member of the New People's Army (NPA), an outlawed subversive organization. *Subversion being a continuing offense,* the arrest of Rolando Dural without warrant is justified as it can be said that he was committing an offense when arrested.

Inferentially, the Court, therefore, held that an arrest for the continuing offense of subversion committed by being a member of an outlawed

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[13]Umil v. Ramos, G.R. No. 81567, Decision, at 9, par. 1.

[14]Umil v. Ramos, G.R. No. 81567, Decision, at 7.

organization, falls under paragraph (a) on arrests of persons in *flagrante delicto.*

Comments

1. *No basis for holding that petitioner was arrested for a crime different from that of which he is charged.*

I do not know upon what evidence the court concluded that petitioner was arrested or being a member of the NPA. Perhaps, it based its conclusion from the Return made by the respondents. *The undisputed fact of the matter, however, is that he was arrested and charged of Double Murder, not of Subversion under Presidential Decree No. 885.*[15]

The filing of the criminal information constitutes an effective estoppel that bars respondent from claiming otherwise. The same is true for the court which should be barred from concluding that petitioner was arrested for *a crime different from what he was charged of.*

2. *Petitioner's arrest cannot all under the in flagrante delicto exception.*

People v. Burgos, strongly affirms the general rule that all arrests must be made under authority of a judicial warrant. This is the device by which our constitutional right to be secure against unreasonable searches and seizures is made effective. It constitutes an integral part of that right. While the requirement of a judicial arrest warrant, it held that *such exceptions must be strictly construed.*

The *in flagrante* exception under paragraph (a) requires that the arresting officer was able to perceive, with the use of his five senses, that the person to be arrested has committed, is committing, or is attempting to commit a crime. This means that the officer could see, hear, smell, taste or feel the crime being committed in his presence.

Applying the foregoing principle to the case being discussed, may it be said that the arresting officer could actually perceive that petitioner committed the crime of subversion in his physical presence? At the time of his arrest, petitioner was being treated for a gunshot wound. *He was*

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[15]PRES. DECREE No. 885 (197).

performing no overt act related to the crime of which he was actually charged, or of being a member of the NPA, as the high court questionably held. Under this situation, it would be impossible to make that conclusion.

The crime of being a member of an outlawed subversive organization requires certain essential elements to be proved, namely, (1) that the suspect willfully joined the organization knowing fully well that its objective is to overthrow the government or to dismember a portion of its territory; and (2) that he committed an overt act showing his affiliation and support of said organization in the accomplishment of its objective.[16] Such overt act could take the form of acting as courier, giving financial contributions, delivering and distributing propaganda material, preparing subversive documents, and similar acts.[17] The element of willfulness is a state of mind of the accused that by its nature cannot immediately perceived by another per son. As to the requisite of an overt act, there was no mention that petitioner *Dural* was committing any such act at the time he was arrested. It was, therefore, illogical for the Court to conclude that *Dural* was committing the crime of subversion at the time of his arrest. Further, the doctrines of strict construction against the government, and of strictly construing the exceptions to the requirement of a judicial warrant, would effectively nullify and invalidate the warrantless arrest of petitioner in this case.

3. Post-arrest singular identification of petitioner without counsel is invalid.

The decision states that petitioner, after his arrest and while confined at the CAPCOM Regional Medical Services, was positively identified as the gunman who killed the two soldiers. It is safe to assume that no police line-up was made. In all probability, the eyewitnesses were simply brought to the military medical clinic and asked whether the person in the hospital bed was the person they saw shooting the soldiers. *People v. Usman Hassan*[18] holds that such "singular identification is pointedly suggestive" and that thereby subverted the reliability of the eyewitness' identification of the petitioner as the gunman in the fatal shooting. Further, it held that *the right to counsel is for "all stages of the investigation of a crime, especially at its most crucial stage, the*

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[16]*Id.*, sec. 3.

[17]*Id.*

[18]G.R. No. L-68969, 157 SCRA 261 (1988).

identification of the accused." The High Court then concluded that "for this infringement alone, the accused-appellant should be acquitted."

There is no showing that petitioner *Dural* was afforded the right to counsel during his identification. Accordingly, such identification was invalidated and cannot be the basis for his subsequent warrantless arrest.

4. Reliance upon Garcia-Padilla v. Enrile is misplaced.

In upholding the warrantless arrest of *Dural*, the Supreme Court cited its reasoning in *Garcia-Padilla v. Enrile*,[19] that the "capture of the accused *in the course of an armed conflict need not follow the usual procedure in the prosecution of offenses." That case suggests that the situation in armed insurrection should be governed by the rules of war rather than the civilized rules of criminal procedure.* Thus *Garcia-Padilla* holds that "if killing and other acts of violence against rebels find justification in the exigencies of armed hostilities which is of the essence of waging a rebellion or insurrection, most assuredly so in case of invasion, merely seizing their persons and detaining them while any of these contingencies continues, cannot be less justified."

It is not entirely clear whether, by quoting those passages, the Supreme Court is junking not only the rules on criminal procedure but also the constitutional right of the accused, in cases involving the ongoing communist insurrection. If it is, it is well to recall the well known assurance that the Constitution is a law for rulers and people *in war and in peace*, and covers with the mantle of its protection all classes of men at all times and under all circumstances.[20] Further, the arrest and detention of *Garcia-Padilla* was ultimately justified by the issuance of a presidential commitment Order (PCO) which, the Court held, "substitutes for judicial process" and the exercise of which "is not subject to judicial inquiry." Lastly, Proclamation No. 2045 continued in force the suspension of the privilege of the writ of *habeas corpus*. The holding that the warrantless arrest of petitioner was valid was merely a make weight argument to these two considerations that provided the essential bases for denying the writ prayed for.

The 1987 Constitution has clearly rejected the preventive detention scheme that has resulted in so much arbitrary detentions and at the same

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[19]G.R. No. L-61388, 121 SCRA 472 (1983).

[20]*Ex Parte* Milligan, 4 Wall, 2 L. Ed. 281 (1866).

time further restricted the grounds for suspending the privilege of the writ of *habeas corpus* to actual invasion or insurrection, removing imminent danger thereof.[21] All these undercut the validity of *Garcia-Padilla* which should, therefore, be no longer considered good law.

5. Application of the continuing crime doctrine is questionable.

A continuing offense is a continuous, unlawful act or series of acts, set on foot by a single impulse and operated by an intermittent force, however long a time it may occupy.[22]

For a continuous crime to exist, *there should be plurality of acts performed separately during a period of time;* unity of penal provision infringed upon or violated; and unity of criminal intent or purpose, which means that two or more violations of the same penal provision are united in one and the same intent leading to the perpetration of the same criminal purpose or aim.[23] A good example of a continuing crime is estafa wherein its two essential elements of defraudation through deceit and the damage suffered by the victim are committed in two separate places that fall under different territorial jurisdictions of two courts. In such a situation, the court of either place has jurisdiction to try the accused.[24]

Another example is forcible abduction where the victim is transported to different places. In this case, the accused may be tried not only in the place where the abduction occurred, but also in every municipality where the abductors and their victims passed by.[25]

Applying the foregoing definition and essential requisites, as illustrated in the crimes of estafa and abduction above, the concept of a continuing crime most certainly cannot apply to the facts of the case under discussion. The doctrine requires the performance of a series of acts or a plurality of acts performed separately. As already pointed out, *Dural* most certainly was not committing the overt act of being a courier, delivering or

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[21]CONST. art. VII, sec. 18.

[22]BOUVIERS LAW DICTIONARY.

[23]People v. Zapata, G.R. No. L-3047, 16 May 1951.

[24]People v. Gorospe, G.R. No. L-74053-54, 157 SCRA 154 (1988); People v. Go Bin, G.R. No. L-68575, 142 SCRA 238 (1986).

[25]People v. Gorospe, G.R. No. L-51513, 129 SCRA 233 (1984); U.S. v. Bernabe, G.R. No. 6923, 23 Phil. 154 (1912).

distributing propaganda materials, making his financial contributions and other acts mentioned by the Anti-Subversion Law. But even if he were, it is doubtful whether the commission of those acts would be sufficient to make a warrantless arrest. For the fact of the matter is that the said acts by themselves are equivocal by nature, equally susceptible of both innocent and guilty construction. Taken together with other evidence, however, they may establish probable cause sufficient for the issuance of a warrant of arrest.

ANONUEVO V. RAMOS
(G.R. No. L-84583-84)

Facts of the Case

In the evening of 13 August 1988, petitioners arrived at the house of Renato Constantino which was then under military surveillance. The military agents noticed bulging objects on the waistlines of the petitioners. They were stopped and frisked, the search yielding loaded guns for which they could not produce any license or permit. Thereupon, they were arrested and brought to the PC Headquarters where they were identified as members of the communist party by former comrades. After inquest, they were charged for violation of Presidential Decree No. 1866. Their petition for *habeas corpus* was denied by the Supreme Court which upheld their warrantless arrest on the ground of their undisputed possession of unlicensed firearm. The filing of the criminal information was likewise upheld to be valid under section 7, Rule 112 which authorizes such filing without necessity of conducting a preliminary investigation of persons lawfully arrested without a warrant.

Comments

I express concurrence in the denial of *habeas corpus* on the assumption that the factual basis stated by the respondents is correct. My only criticism on the decision in this case is that the failure to realize that the ultimate issue involved is certainly not the validity of the warrantless arrest of the petitioner, but the reasonableness of the stop and frisk search that resulted in the discovery of the unlicensed firearms.

This issue was fully reasoned out in the landmark case of *Terry v. Ohio*.[26] This case makes a distinction between the right against

[26]392 U.S. 1 (1968).

unreasonable searches and seizures and the warrants clause of the constitutional provision. The first part is governed by the standard of reasonableness; the second utilizes the higher standard of probable cause. Reasonable articulable suspicion of a crime is sufficient justification for a police officer to temporarily stop a person for questioning. In doing so, if the officer has reasonable ground to believe that the person stopped is armed, he may frisk the suspect for weapons in order to protect himself from possible violence.

The crucial issue is whether there were reasonable grounds to stop *Anonuevo* and *Caspile* while they were on their way to visit Renato Constantino. Just the day before, on the authority of a judicial search warrant, the military had conducted a search of Constantino's residence. This resulted in the seizure of assorted firearms, ammunition and communication equipment. Constantino's interrogation yielded the information that other members of his communist group would be coming to his place. Barely two hours after the arrest of *Constantino, Buenaobra* indeed went to the *Constantino* residence and upon his arrest admitted to being an NPA courier. The incident relating to Anonuevo came within twenty-four hours of Constantino's arrest.

Under the foregoing circumstances, assuming them to be correct, there is no doubt in my mind that the military agents had acted reasonably in stopping petitioners *Anonuevo* and *Caspile.* The ensuing frisk was also reasonable considering the manifest bulge in their waistlines that indicated a tucked weapon. When they could not produce any permit or license to possess the weapons discovered by the frisk, there can be no question that the consequential warrantless arrest was a lawful one under paragraph (a), section 15, of Rule 112.

ESPIRITU V. LIM
(G.R. No. L-85727)

Facts of the Case

Petitioner was awakened from his bed before dawn on 23 November 1988 by his sister who informed him that a group of persons wanted to hire his jeepney. When he went out, he was immediately placed under arrest. Subsequently, a criminal information was filed charging him of Inciting to Sedition penalized by Article 142 of the Revised Penal Code. The crime was alleged to have been committed the day before his arrest during a press conference at the National Press Club wherein he urged all drivers and the

operators to go on a nationwide strike in order to force the government to lower the prices of spare parts and grant the other demands of his jeepney drivers association called PISTON.

The Supreme Court upheld the warrantless arrest of petitioner by simply stating that it "was in accordance with the provisions of Rule 113, Section 5 (b) of the Rules of Court." *The Supreme Court gave absolutely no reason to support that bare conclusion.* It then held that petitioner "may not be released on *habeas corpus*" since he "is detained by virtue of a valid information filed with the competent court."

Comments

I have earlier discussed that the filing of an information does not constitute any authority or detaining a person, as the Court erroneously held. Let us now discuss that barren conclusion that the warrantless arrest of the petitioner was valid under paragraph (b) which provides:

> When an offense has *in fact just been committed* and he (the person arresting) has personal knowledge of facts indicating that the person to be arrested has committed it.

The alleged incitement consisted of the following utterance:

> *Bukas, tuloy and welga natin... at hindi tayo titigil hanggang hindi binibigay ng gobyerno ni Cory ang gusto nating pagbaba ng halaga ng spare parts, bilhin at ang pagpalaya sa ating pinuno na si Ka Roda hanggang sa magkagulo na.* (Emphasis supplied)

Translated into English, the utterance is: Tomorrow, we will continue with our strike and will not stop until the government of Cory will give what we demand for lowering the prices of spare parts, commodities and the release of our president who is *Ka Roda* until the point of *gulo* is reached. The word gulo could mean violence, confusion or disorder. Even assuming that violence is the meaning intended, the whole utterance does not show that petitioner was advocating violence. If at all, it was a conditional threat to resort to violence in the event that their demands were not met. There is, therefore, *no clear and present danger* that would justify the conclusion that petitioner had committed the crime of inciting to sedition that would have justified his immediate warrantless arrest.

Hypothetically assuming that said crime was committed, the next question to be addressed is whether the phrase a crime *had just been*

committed would include an arrest *a day after its commission.* Espiritu clearly contradicts *Umil* on this issue since the *Umil* holding that said petitioner's arrest a day after the shooting of the CAPCOM soldiers was not justified under this paragraph.

At this point it is well to recall the utterance of Senator Salonga for which he was also arrested when he warned that there is a "likelihood of violent struggle unless reforms are instituted." The high court held that these are "nothing but a legitimate exercise of freedom of thought and expression" that is protected by the constitution as "a preferred right which stands on a higher level than substantive economic or other liberties."

It is significant to note that the petitioner Espiritu was arrested on the very day that he had scheduled the nationwide strike to begin. *The reasonable suspicion cannot be escaped that the arrest was precisely timed to be a prevented detention of the petitioner so that he could not lead the strike as scheduled. It was a preemptive measure rather than a real arrest for a supposed crime.*

The conclusion is inescapable that Espiritu was entitled to have been forthwith released on *habeas corpus* rather than afforded the small consolidation of being allowed his provisional liberty on the reduced bail of P10,000.00.

NAZARENO V. STATION COMMANDER
(G.R. No. L-86332)

Facts of the Case

Two weeks after a murder was committed in Alabang, a suspect was arrested. Upon interrogation, he pointed to petitioner *Nazareno* as his companion in the killing. Forthwith, the police went to arrest the petitioner without a warrant. Nothing is stated in the decision to show what *Nazareno* was doing at the time of his warrantless arrest. Subsequently, an information was filed charging Nazareno and three others with the killing. Again, the decision omits to state what particular crime he was charged of, *i.e.*, murder or homicide. After his motion to post bail was denied, petitioner filed for *habeas corpus.*

As in *Espiritu*, the Supreme Court denied release on *habeas corpus* on the ground that petitioner "is in the custody of the respondents by reason of an information filed against him." Further, it held that "evidently, the

arrest of *Nazareno* was effected by the police without warrant pursuant to section 5 (b), Rule 113 after he was positively implicated by his co-accused in the killing." In support of said bare conclusion, it cited *People v. Ancheta*[27] where it was held that "the obligation of an agent of authority to make an arrest by reason of a crime, *does not pre-suppose as a necessary requisite for the fulfillment thereof the indubitable existence of a crime."*

Comments

It should immediately be pointed out that the quotation from *Ancheta* is no longer good law since it was based on the Rules of Court before it was amended. Section 5(b) now requires that an offense must have in fact just been committed.

The same comment made in *Espiritu* is applicable here. It is absurd to state that respondents have custody by reason of the information filed. They acquired custody by reason of the warrantless arrest.

The issuance of a judicial order of commitment or custody is intended to confer upon the court jurisdiction over the person of the accused and serves as a basis for transferring custody over him from the law enforcement agency to the custodial agency. This was intended to prevent the third degree methods of interrogation utilized by the police. This purpose, however, was effectively obstructed by the deletion from the Rules of Court, the provision requiring *presentment* to a judge of the person of suspect who was arrested without a warrant. Instead the arrested person is now required to be delivered to the nearest police station or jail.[28] Such purpose was likewise nullified with the integration of the police and the custodial agency. This is now responsible for the "borrowing" of prisoners by investigative officers who are thereby afforded unlimited opportunities or temptation to commit abuses in police interrogations.

It is clear from the foregoing that a procedural reform reinstating the presentment provisions of the section 17, Rule 113 of the former Rules of Court on the *Duty of Person Making Arrest Without Warrant* has been made out.

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[27]68 Phil. 415 (1939).

[28]RULES OF COURT, Rule 113, sec. 5, last paragraph.

Parenthetically, attention must be called to a curious statement made by the Court, *viz*,

> [o]bviously, the evidence of petitioner's guilt is strong because on 3 January 1989, an information charging Nazareno with the killing was filed.

This is a good example of what a *non-sequitur* is. And coming as it does from the Supreme Court, it should remind us that the august body is composed of fallible human beings. It would not follow from the filing of an information that the evidence of guilt is strong. That is the reason why a hearing is required to make that determination in an application to be admitted to bail in a capital offense. A conclusion that the evidence of the prosecution is weak without conducting such a hearing constitutes a denial of the petitioner's right to due process.[29]

Invalidity of Nazareno's Warrantless Arrest

The justification of a warrantless arrest is the exigency of the situation that requires quick action in order to prevent escape of the criminal or prevent him from inflicting further harm. This does not exist under the facts of this case. Two weeks having elapsed since the murder was committed, it would be stretching the limits of language to hold that this is a crime that *just been committed*. There was, therefore, ample time for the prosecution to present their evidence before a neutral and impartial magistrate to convince him of the existence of probable cause to issue a warrant of arrest.

The fact of this case is very similar to *Burgos* where Burgos was pointed at by a rebel surrenderee as the person who recruited him to the communist cause. He was arrested while he was plowing his field. A warrantless search was conducted at his home where a firearm was buried nearby. Charged and convicted of Illegal Possession of Firearm in Furtherance of Rebellion, the Supreme Court reversed the conviction and declared the warrantless arrest illegal. This case is the appropriate citation that should have been made in support of petitioner's release on *habeas corpus*, to which he was clearly entitled.

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[29]People v. Duldulao, G.R. No. L-81389, 21 February 1989.

CONCLUDING REMARKS

Decisions of the courts, particularly those made by the Supreme Court, have the salutatory effect of conveying clear messages to law enforcement agencies of what constitutes proper police conduct. Thus, decisions that exclude illegally seized evidence, or acquit an accused for violation of his constitution all rights or release through *habeas corpus*, petitioner who is held to have been illegally confined or restrained of his liberty, tell the police or the military that their conduct has transgressed constitutional guarantees. A contrary ruling, as was made in these petitions, has the consequential effect of showing approval and thereby legitimating the questioned official conduct.

The danger of *Umil* then is its unspoken message encouraging warrantless arrests that are based on standards less than that of probable cause, or merely on suspicion. There is no question that *Umil* is a poorly written decision that does not do justice to the Supreme Court. Certainly, it can never be regarded as a landmark decision but will be remembered for its dangerous potentials.

The total failure of the Supreme Court to even merely attempt to balance the competing societal interest in effective law enforcement with the individual's need to be protected in his civil liberties. *Umil* seems to be an unthinking response to society's presently urgent need for law and order in the light of the perceived instability of the government. Perhaps an answer to this need is to return paragraph 5(b) to its original formulation and do away with the present unrealistic requirement of establishing that a crime has in fact just been committed and the further requirement of personal knowledge of facts indicating that the person to be arrested has committed it. These requirements provide unnecessary obstacles to efficient law enforcement. Reasonable ground to believe that the person to be arrested has committed a crime is a standard that strikes such a balance.

Unreasonable denials of petitions for *habeas corpus* makes a mockery of its lavish praises as the great writ of liberty and as the most important human right in the Constitution. Worse, as already pointed out, it unjustifiably encourages violations of cherished civil liberties.

The rebels are out to overthrow the government that adheres to the Constitution. If the government dispenses with constitutional guarantees in its fight against the rebels, it has in effect become one of them.

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