

**ROGER POSADAS, ROSARIO TORRES-YU, AND MARICHU LAMBINO,
PETITIONERS, VS. THE HON. OMBUDSMAN, THE SPECIAL
PROSECUTOR, AND ORLANDO V. DIZON, RESPONDENTS.***G.R. No. 131492. September 29, 2000*

Ponente: MENDOZA, J.

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Dennis Venturina, a member of Sigma Rho at the University of the Philippines, was killed in a rumble between his fraternity and another fraternity on December 8, 1994. In a letter dated December 11, 1994, petitioner Roger Posadas, then Chancellor of U.P. Diliman in Quezon City, asked the Director of the National Bureau of Investigation for assistance in determining the persons responsible for the crime. In response to the request, respondent Orlando V. Dizon, Chief of the Special Operations Group of the NBI, and his men went to U.P. on December 12 and, on the basis of the supposed positive identification of two alleged eyewitnesses, Leandro Lachica and Cesar Mangrobang, Jr., attempted to arrest Francis Carlo Taparan and Raymundo Narag, officers/members of the Scintilla Juris Fraternity, as suspects in the killing of Venturina. It appears that the two suspects had come that day to the U.P. Police Station for a peace talk between their fraternity and the Sigma Rho Fraternity.

Petitioners Posadas, Marichu Lambino, and Rosario Torres-Yu, also of U.P., and a certain Atty. Villamor, counsel for the suspects, objected on the ground that the NBI did not have warrants of arrest with them. Posadas and Atty. Villamor promised to take the suspects to the NBI Office the next day. As a result of their intervention, Taparan and Narag were not arrested by the NBI agents on that day.[1] However, criminal charges were filed later against the two student suspects.[2]

Dizon then filed a complaint in the Office of the Special Prosecutor, charging petitioners Posadas, Torres-Yu, Lambino, Col. Eduardo Bertain, Chief of the Security Force of the U.P. Police, and Atty. Villamor with violation of P.D. 1829,[3] which makes it unlawful for anyone to obstruct the apprehension and prosecution of criminal offenders.

On May 18, 1995, an information[4] was filed against them, alleging that:

That on or about December 12, 1994 and for sometime prior or subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, namely: ROGER POSADAS, Chancellor; ROSARIO YU - Vice Chancellor; ATTY. MARICHU LAMBINO - Asst. Legal Counsel; and COL. EDUARDO BERTAIN - Chief, Security Force, all of the University of the Philippines, Diliman, Quezon City, all public officers, while in the performance of their respective official functions, taking advantage of their official duties and committing the crime in relation to their office, conspiring and confederating with each other and with a certain ATTY. VILLAMOR, did then and there wilfully, knowingly and criminally obstruct, impede and frustrate the apprehension of FRANCIS CARLO TAPARAN and RAYMUNDO NARAG, both principal suspects involved in the brutal killing of DENNIS VENTURINA, a U.P. graduating student and Chairperson of the UP College of Administration, Student Council, and delaying

the investigation and prosecution of the said heinous case by harboring and concealing said suspects thus, leading to the successful escape of suspects Narag and another principal suspect JOEL CARLO DENOSTA; that said above acts were done by the above-named accused public officials despite their full knowledge that said suspects were implicated in the brutal slaying of said Dennis Venturina, thus preventing the suspects arrest, prosecution and conviction.

CONTRARY TO LAW.

Later, on motion of petitioners, the Special Prosecutor's Office recommended the dismissal of the case. But the recommendation was disapproved. In a memorandum, dated September 8, 1997, the Office of the Ombudsman directed the Special Prosecutor to proceed with the prosecution of petitioners in the Sandiganbayan. Hence this petition for certiorari and prohibition to set aside the resolution of the Ombudsman's office ordering the prosecution of petitioners.

Petitioners contend that:

- THE HONORABLE OMBUDSMAN COMMITTED GRAVE ABUSE OF DISCRETION WHEN HE RULED THAT: 1) STUDENTS COULD BE ARRESTED WITHOUT WARRANT ON MERE SUSPICION; 2) PD 1829 INCLUDES ARRESTS WITHOUT WARRANTS ON MERE SUSPICION; AND WHEN HE REVERSED THE FINDINGS AND RESOLUTION OF THE SPECIAL PROSECUTION OFFICER, THE DEPUTY SPECIAL PROSECUTOR AND THE SPECIAL PROSECUTOR, WHO CONDUCTED THE REINVESTIGATION OF THE CASE; AND FINALLY WHEN HE RESOLVED THAT PETITIONERS SHOULD BE SUBJECTED TO PUBLIC TRIAL WHEN THERE IS NO PROBABLE CAUSE AND NO BASIS.

- SECTION 1, PARAGRAPH C OF PRESIDENTIAL DECREE NO. 1829 IS UNCONSTITUTIONAL.[5]

Two issues are raised in this case, to wit: (1) Whether the attempted arrest of the student suspects by the NBI could be validly made without a warrant; and (2) Whether there was probable cause for prosecuting petitioners for violation of P.D. No. 1829. We answer these questions in the negative.

First. In view of Art. III, §2 of the Constitution, the rule is that no arrest may be made except by virtue of a warrant issued by a judge after examining the complainant and the witnesses he may produce and after finding probable cause to believe that the person to be arrested has committed the crime. The exceptions when an arrest may be made even without a warrant are provided in Rule 113, §5 of the Rules of Criminal Procedure which reads:

(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 the facts indicating that the person to be arrested has committed it;

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

There is no question that this case does not fall under paragraphs (a) and (c). The arresting officers in this case did not witness the crime being committed. Neither are the students fugitives from justice nor prisoners who had escaped from confinement. The question is whether paragraph (b) applies because a crime had just been committed and the NBI agents had personal knowledge of facts indicating that Narag and Tapanan were probably guilty.

Respondents contend that the NBI agents had personal knowledge of facts gathered by them in the course of their investigation indicating that the students sought to be arrested were the perpetrators of the crime.[6] They invoke the ruling in *People v. Tonog, Jr.*[7] in which it was held:

It may be that the police officers were not armed with a warrant when they apprehended Accused-appellant. The warrantless arrest, however, was justified under Section 5 (b), Rule 133 (sic) of the 1985 Rules of Criminal Procedure providing that a peace officer may, without a warrant, arrest a person "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." In this case, Pat. Leguarda, in effecting the arrest of Accused-appellant, had knowledge of facts gathered by him personally in the course of his investigation indicating that Accused-appellant was one of the perpetrators.

In that case, the accused voluntarily went upon invitation of the police officer who later noticed the presence of blood stains on the pants of the accused. Upon reaching the police station, the accused was asked to take off his pants for examination at the crime laboratory. The question in that case involved the admissibility of the maong pants taken from the accused. It is clear that *Tonog* does not apply to this case. First, the accused in that case voluntarily went with the police upon the latter's invitation. Second, the arresting officer found blood stains on the pants of the accused, on the basis of which he concluded that the accused probably committed the crime for which reason the latter was taken into custody. Third, the arrest was made on the same day the crime was committed. In the words of Rule 113, §5(b), the crime had "just been committed" and the arresting officer had "personal knowledge of the facts indicating that the person to be arrested had committed it."

In contrast, the NBI agents in the case at bar tried to arrest Narag and Tapanan four days after the commission of the crime. They had no personal knowledge of any fact which might indicate that the two students were probably guilty of the crime. What they had were the supposed positive identification of two alleged eyewitnesses, which is insufficient to justify the arrest without a warrant by the NBI.

We have already explained what constitutes "personal knowledge" on the part of the arresting officers:

"Personal knowledge" of facts in arrests without a warrant under Section 5 (b) of Rule 113 must be based upon "probable cause" which means an "actual belief or reasonable grounds of suspicion." The grounds of suspicion are reasonable when, in the absence of actual belief of the arresting officers, the suspicion that the person to be arrested is probably guilty of committing the offense is based on actual facts, i.e., supported by circumstances sufficiently strong in themselves to create the probable cause of guilt of the person to be arrested. A reasonable suspicion therefore must be founded on probable cause, coupled with good faith on the part of the peace officers making the arrest.[8]

Indeed, at the time Dennis Venturina was killed, these agents were nowhere near the scene of the crime. When respondent Dizon and his men attempted to arrest Tapanan and Narag, the latter were not committing a crime nor were they doing anything that would create the suspicion that they were doing anything illegal. On the contrary, Tapanan and Narag, under the supervision of the U.P. police, were taking part in a peace talk called to put an end to the violence on the campus.

To allow the arrest which the NBI intended to make without warrant would in effect allow them to supplant the courts. The determination of the existence of probable cause that the persons to be arrested committed the crime was for the judge to make. The law authorizes a police officer or even an ordinary citizen to arrest criminal offenders only if the latter are committing or have just committed a crime. Otherwise, we cannot leave to the police officers the determination of whom to apprehend if we are to protect our civil liberties. This is evident from a consideration of the requirements before a judge can order the arrest of suspects. Art. III, §2 of the Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

For the failure of the NBI agents to comply with constitutional and procedural requirements, we hold that their attempt to arrest Taparan and Narag without a warrant was illegal.

Second. In ordering the prosecution of petitioners for violation of P.D. No. 1829, §1(c), the Office of the Ombudsman stated in its memorandum dated September 8, 1997:

From the facts adduced, it is submitted that respondents had reasonable ground to suspect that the SJ members sought to be arrested participated in the clubbing of Dennis Venturina, eventually leading to the latter's demise. It must be remembered that these SJ members were positively identified by two eyewitnesses. A reasonably prudent mind could not just ignore this positive identification. In fact, respondents do not dispute the identification made on the alleged participants in the clubbing of Dennis Venturina.

Respondent U.P. officials justify their act of barring the apprehending officers from arresting the SJ members on the ground that the warrantless arrest sought to be effected did not conform with Sec. 5, Rule 113 of the Rules of Court; thereby averting, what would be in their opinion, an illegal arrest. While this justification may, at best, show their good faith, it does not detract from the fact that they had reasonable ground to suspect that the SJ members sought to be arrested committed the heinous crime of murder as a result of the positive identification made by two eyewitnesses. Besides, the reliance on the alleged illegality of the arrest just shows the clear intent, on respondents' part, to wilfully obstruct, frustrate or, at the least, delay the apprehension and investigation and prosecution of the SJ members positively identified.

To be sure, respondents knew fully well that inquest proceedings follow warrantless arrests. It is in this forum where the prosecutor conducting the inquest may rule on their opinion on whether or not the warrantless arrest effected was valid; he having the quasijudicial authority to rule on this matter. Of course, there are various remedies under the law which respondents may have likewise availed of or resorted to in order to secure the liberty of the SJ members had the latter been arrested, without prejudice to any criminal or administrative actions that they may have filed against the arresting NBI agents. However, it appears that they took the law into their own hands in a manner that obstructed and delayed the investigation being conducted by a law enforcement agency like the NBI. They facilitated the escape of the two SJ members pinpointed by eyewitnesses as among those who clubbed to death Dennis Venturina.[9]

The question is not whether petitioners had reasonable grounds to believe that the suspects were guilty. The question is whether the suspects could be arrested even in the absence of a warrant issued by a court, considering that, as already explained, the attempted arrest did not fall under any of the cases provided in Rule 113, §5. Regardless of their suspicion, petitioners could not very well have authorized the arrest without warrant of the students or even effected the arrest themselves. Only courts could decide the question of probable cause since the students were not being arrested in flagrante delicto. As the Special Prosecutor stated in his memorandum, dated May 18, 1995, in recommending the dismissal of the case against petitioners:

All told, the evidence adduced in this case do not show that on the night of December 12, 1994, the accused knew or had reasonable ground to believe that the students who were then at the U.P. police headquarters had committed a crime. Neither were the warrantless arrest being sought to be made on campus that night, legal. The U.P. officials then present had every right to prevent the commission of illegal arrests of students on campus.

Based on all the foregoing, the obvious conclusion is that, there is no probable cause to charge Posadas,

Torres-Yu, Lambino, Bentain and Atty. Villamor of violating Section 1(c) of P.D. 1829. Probable cause is defined as "sufficient ground to engender a well founded belief that a crime cognizable by the court has been committed and that the respondents are probably guilty thereof and should be held for trial" (Section 1, Rule 12, Rules of Court). The absence of an arrest warrant, the absence of knowledge or reasonable ground on the part of the accused to believe that the students had committed a crime, the absence of any law punishing refusal to attend an investigation at the NBI, all show that there is no sufficient ground to charge the accused with Obstruction of Justice. On the contrary, the circumstances show that the accused, in safeguarding the rights of students, were acting within the bounds of law.[10]

Third. Petitioners are being prosecuted under the following provision of P.D. No. 1829:

SEC. 1. The penalty of prision correccional in its maximum period, or a fine ranging from 1,000 to 6,000 pesos, or both, shall be imposed upon any person who knowingly or wilfully obstructs, impedes, frustrates or delays the apprehension of suspects and the investigation and prosecution of criminal cases by committing any of the following acts:

....

(c) harboring or concealing, or facilitating the escape of, any person he knows, or has reasonable ground to believe or suspect, has committed any offense under existing penal laws in order to prevent his arrest, prosecution and conviction;

The rule, of course, is that a criminal prosecution cannot be enjoined.[11] But as has been held, "[i]ninitely more important than conventional adherence to general rules of criminal procedure is respect for the citizen's right to be free not only from arbitrary arrest and punishment but also from unwarranted and vexatious prosecution." [12] As we held in the similar case of *Venus v. Desierto*: [13]

Conformably with the general rule that criminal prosecutions may not be restrained either through a preliminary or final injunction or a writ of prohibition, this Court ordinarily does not interfere with the discretion of the Ombudsman to determine whether there exists reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof and, thereafter, to file the corresponding information with the appropriate courts. There are, however, settled exceptions to this rule, such as those enumerated in *Brocka v. Enrile*, to wit:

- a. To afford protection to the constitutional rights of the accused (*Hernandez vs. Albano, et al.* L-19272, January 25, 1967, 19 SCRA 95);
- b. When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions (*Dimayuga, et al. vs. Fernandez*, 43 Phil. 304; *Hernandez vs. Albano, supra*; *Fortun vs. Labang, et al.*, L-38383, May 27, 1981, 104 SCRA 607);
- c. When there is a prejudicial question which is sub judice (*De Leon vs. Mabanag*, 70 Phil. 202);
- d. When the acts of the officer are without or in excess of authority (*Planas vs. Gil*, 67 Phil. 62);
- e. Where the prosecution is under an invalid law, ordinance or regulation (*Young vs. Rafferty*, 33 Phil. 556; *Yu Cong Eng vs. Trinidad*, 47 Phil. 385, 389);
- f. When double jeopardy is clearly apparent (*Sangalang vs. People and Alvendia*, 109 Phil. 1140);
- g. Where the court has no jurisdiction over the offense (*Lopez vs. City Judge*, L-25795, October 29, 1966, 18 SCRA 616);
- h. Where it is a case of persecution rather than prosecution (*Rustia vs. Ocampo*, CA-G.R. No. 4760, March 25, 1960);

- i. Where the charges are manifestly false and motivated by the lust for vengeance (*Recto vs. Castelo*, 18 L.J. (1953), cited in *Rañoa vs. Alvendia*, CA G.R. No. 30720-R, October 8, 1962; Cf. *Guingona, et al. vs. City Fiscal*, L-60033, April 4, 1984, 128 SCRA 577);
- j. Where there is clearly no prima facie case against the accused and a motion to quash on that ground has been denied (*Salonga vs. Paño, et al.*, L-59524, February 18, 1985, 134 SCRA 438); and
- k. Preliminary injunction has been issued by the Supreme Court to prevent the threatened unlawful arrest of petitioners (*Rodriguez vs. Castelo*, L- 6374, August 1, 1953) cited in *Regalado*, Remedial Law Compendium, p. 188, 1988 Ed.)

In this case, petitioners' objection to the arrest of the students cannot be construed as a violation of P.D. No. 1829, §1(c) without rendering it unconstitutional. Petitioners had a right to prevent the arrest of Tapanan and Narag at the time because their attempted arrest was illegal. Indeed, they could not have interfered with the prosecution of the guilty parties because in fact petitioner Posadas had asked the NBI for assistance in investigating the death of Venturina. On the other hand, just because petitioners had asked for assistance from the NBI did not authorize respondent Dizon and his men to disregard constitutional requirements.

The Office of the Ombudsman, however, found that the intervention by petitioners resulted in the escape of the student suspects as petitioner Posadas and Atty. Villamor failed in their undertaking to surrender the students the following day.[14] Hence, the information against them charged that petitioners willfully obstructed the apprehension of the suspects Tapanan and Narag, leading to the successful escape of these students and another principal suspect, a certain Joel Carlo Denosta.[15] The student suspect mentioned by both the resolution dated May 18, 1995 and the information, a certain Joel Carlo Denosta, was not one of the students whose arrest by the NBI agents petitioners prevented on December 12, 1994. Moreover, whether or not petitioner Posadas surrendered the student suspects to the NBI agents the following day is immaterial. In the first place, they were not sureties or bondsmen who could be held to their undertaking. In the second place, the fact remains that the NBI agents could not have validly arrested Tapanan and Narag at the U.P. Police Station as they did not have a warrant at that time. Hence, only the NBI agents themselves could be faulted for their inability to arrest Tapanan and Narag. If the NBI believed the information given to them by the supposed eyewitnesses, the NBI should have applied for a warrant before making the attempted arrest instead of taking the law into their own hands. That they chose not to and were prevented from making an arrest for lack of a warrant is their responsibility alone. Petitioners could not be held accountable therefor.

We understand that the highly publicized death of Dennis Venturina caused a public clamor to bring to justice those responsible therefor. We also recognize the pressures faced by law enforcement agencies to effect immediate arrests and produce results without unnecessary delay. But it must be remembered that the need to enforce the law cannot be justified by sacrificing constitutional rights. The absence of probable cause for the filing of an information against petitioners is evident from the records. They cannot be indicted because they dared to uphold the rights of the students. Hence, we see no other recourse but to enjoin the Sandiganbayan and the Ombudsman from proceeding with the case against petitioners.

Fourth. The conclusion we have thus far reached makes it unnecessary to consider petitioners' challenge to P.D. No. 1829, §1(c). For a cardinal rule of constitutional adjudication is that the Court will not pass upon a constitutional question although properly presented by the record if the case can be disposed of on some other ground such as the application of a statute or general law.[16]

WHEREFORE, the petition is GRANTED and the Ombudsman and his agents are hereby prohibited from prosecuting petitioners for violation of P.D. No. 1829 §1(c) as a result of the incident complained of in Criminal

Case No. 22801 and the Sandiganbayan is ORDERED to dismiss the information in Criminal Case No. 22801 against petitioners.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

[1] Annex A; Memorandum dated May 18, 1995, p. 2; Rollo, p. 38.

[2] Resolution dated Aug. 4, 1997, p. 5; Rollo, p. 52.

[3] Annex A; Memorandum dated May 18, 1995, p. 1; Rollo, p. 37.

[4] Annex C; Rollo, pp. 45-46.

[5] Petition, pp. 7-8; Rollo, pp. 9-10.

[6] Comment, p. 12; Rollo, p. 81.

[7] 205 SCRA 772, 778 (1992).

[8] *People v. Doria*, 301 SCRA 668, 709 (1991).

[9] Annex B; Memorandum dated September 8, 1997, pp. 2-3; Rollo, pp. 43-44.

[10] Resolution dated August 4, 1997, pp. 6-9; Rollo, pp. 53-56.

[11] *Salonga v. Cruz Paño*, 134 SCRA 438 (1985).

[12] *Id.*, p. 448.

[13] 298 SCRA 196, 214-215 (1998).

[14] Resolution dated May 18, 1995, p. 2; Rollo, p. 38.

[15] Rollo, pp. 45-46.

[16] *Ty v. Trampe*, 321 Phil. 81 (1995).

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