

SYRUS J. ALUZAN, JOSE HENRY L. ARELLANO AND FERDINAND M. LAVIN, PETITIONERS, VS. EDDIE FORTUNADO, RESPONDENT.

G.R. No. 249274. August 30, 2023

Ponente: INTING, J.

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INTING, J.:

This resolves the Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court seeking the review and reversal of the Decision[2] dated August 2, 2018, of the Court of Appeals (CA) in CA-G.R. SP No. 11272. The CA found Syrus J. Aluzan (Aluzan), Jose Henry L. Arellano (Arellano), and Ferdinand M. Lavin (Lavin) (collectively, petitioners) guilty of Simple Neglect of Duty.[3] Likewise assailed is the CA Resolution[4] dated August 29, 2019, that denied petitioners' Motion for Reconsideration.[5]

The Antecedents

On September 11, 2014, Eddie Fortunado (Fortunado) filed a complaint[6] for violation of Article 124 of the Revised Penal Code (RPC) for Arbitrary Detention and for Grave Misconduct before the Ombudsman against petitioners, namely: Lavin, who was the former Chief of the National Bureau of Investigation (NBI) of Bacolod City and now Regional Director of NBI Western Mindanao; Aluzan, who is a Special Investigator III; and Arellano, who is a Special Investigator II. Both Aluzan and Arellano are with the NBI Bacolod City.[7]

Fortunado alleged the following:

On June 27, 2012, at around 12:30 p.m., while he was waiting for Rolan Veraje in front of Southern College in Binalbangan, three men approached him and said, "Ikaw ang nakabangga ng bata" (You were the one who hit the child). The men then frisked him for a weapon, forcibly pushed him inside a car, and brought him to the NBI Bacolod City.[8]

At 3:30 p.m. of the same day, Philip B. Arles (Philip) and Francisco C. Britanico (Francisco) arrived at the NBI Bacolod City and asked him why he killed Judge Henry Arles (Judge Arles). When he denied any knowledge about the killing, Philip and Francisco tortured him to confess about the murder. Francisco shocked Fortunado with an electric wire and hit him with a PVC pipe in front of Aluzan and Arellano; both did nothing and merely watched the torture happen. While being recorded in a video, Philip and Francisco made Fortunado sign a document which they themselves prepared. They again electrocuted him for an hour. Francisco then forced Fortunado to write a letter addressed to Lavin stating that he was voluntarily surrendering to ask for protective custody from the NBI.[9]

The next day, Philip gave Fortunado a letter and directed him to familiarize himself with its contents. On July 3, 2012, Fortunado met Albert Arles (Albert), who asked him certain questions based on the same letter. Albert tortured Fortunado every time he gave a wrong answer. Thereafter, Fortunado was forced to sign a document admitting that he was hired to murder Judge Arles, even though it was not true.[10]

In the course of Fortunado's stay at the NBI Bacolod City, he asked for a lawyer of his choice, but his request was

denied. Instead, Atty. Ana Maria Palermo (Atty. Palermo), who is Francisco's friend, was assigned to him as his counsel.[11]

The NBI Bacolod City detained Fortunado, together with Alejandro Capunong (Capunong) and Jessie Daguia (Daguia), to answer for the murder of Judge Arles. The NBI agents told them that their respective families would remain safe if they would just do whatever they were told to do; and they would receive P20,000.00 as monthly salary under the Witness Protection Program. Because Fortunado was suffering from the torture, he agreed to all the terms and conditions given by Albert.[12]

Further, Fortunado alleged that Philip and Francisco knew that he owned a gun; both forced him to reveal its whereabouts. On July 8, 2012, he, together with Philip, Francisco, and some NBI agents, went to his house at Barangay Tampalon where they found and confiscated his gun.[13]

On July 11, 2012, the NBI Bacolod City transferred Fortunado to the NBI Manila where Albert, Philip, and Francisco always visited and threatened him. No one from Fortunado's family was allowed to visit him. This prompted Tessa Fortunado (Tessa), Fortunado's mother, to file a Petition for Writ of Amparo, docketed as SPEC. PROC. Case No. 12-2333, before Branch 42, Regional Trial Court (RTC), Bacolod City wherein she prayed for her son's release as well as an explanation regarding the cause of his detention, and the torture inflicted upon him.[14]

On December 26, 2012, the RTC rendered a Decision[15] decreeing that the case did not fall within the sphere of the privilege of the Writ of Amparo. However, it directed the release of Fortunado after finding that there was no legal basis for his continued confinement.[16]

Aluzan, on the other hand, contended that Fortunado, Capunong, and Daguia, were all positively identified by the witnesses as the perpetrators during the investigation of the murder of Judge Arles. He further alleged that: (1) Capunong and Daguia were earlier apprehended through separate entrapment operations for illegal possession of firearms by the NBI, while Fortunado voluntarily surrendered because he feared for his life and safety; (2) the NBI Bacolod City acquired custody over Fortunado, who voluntarily confessed before the media about his involvement in the murder of Judge Arles; (3) Fortunado, with the assistance of his counsel, Atty. Palermo, signified his intention to participate as a witness in the investigation of the murder of Judge Arles; thus, the NBI Bacolod City transferred him to the NBI Manila for his own safety; however, Fortunado recanted his confession and filed a Petition for Writ of Amparo which the RTC denied; (4) the Department of Justice (DOJ), upon finding of probable cause, filed an Information against Fortunado for the murder of Judge Arles; (5) Fortunado underwent a physical examination which showed that he had no injuries resulting from torture; (6) Fortunado was further examined by Dr. Voltaire G. Maniquis, Jr. of the Commission on Human Rights (CHR) who found no physical injuries on his body; (7) Philip and Francisco could not have tortured Fortunado because the latter was under a 24-hour surveillance by the NBI; and (8) the complaints for torture filed by Fortunado's counsel, Atty. Romeo S. Subaldo, on behalf of Capunong and Daguia, were dismissed for lack of merit.[17]

Meanwhile, in their respective counter-affidavits, Lavin and Arellano reiterated Aluzan's contentions.[18]

The Ruling of the Ombudsman in OMB-V-A-14-0428

In the Decision[19] dated July 29, 2015, the Ombudsman found petitioners guilty of only Simple Misconduct and meted out against them the penalty of suspension of three months without pay.[20]

The Ombudsman found that petitioners lawfully arrested Fortunado on June 27, 2012 without a warrant; when Fortunado surrendered the unlicensed firearm and ammunition, he was considered to have been arrested in flagrante delicto for possessing them without authority.[21] Moreover, the Ombudsman noted that: first, instead

of subjecting Fortunado to an inquest proceeding, petitioners filed a regular complaint[22] for Illegal Possession of Firearms only on August 7, 2012 before the Bacolod City Prosecutor's Office; and second, the Bacolod City Prosecutor's Office indicted Fortunado through a Resolution[23] dated December 21, 2012 for violation of Presidential Decree No. (PD) 1866, as amended by Republic Act No. (RA) 8294[24] and filed the corresponding Information[25] only on January 7, 2013.

According to the Ombudsman, it took petitioners six months to deliver Fortunado to the proper judicial authorities counted from June 27, 2012 up to the filing of the Information on January 7, 2013. As such, the Ombudsman concluded that Fortunado was detained for more than six months with no case filed against him,[26] viz.:

When an arresting officer detains any person for some legal ground, he must deliver such person to the proper judicial authorities within the period of: twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent and thirty-six (36) hours, for crimes, or offenses punishable by afflictive or capital penalties, or their equivalent. Otherwise, they will be held liable for the Delay in the Delivery of Detained Persons to the Proper Judicial Authorities defined and penalized under Article 125 of the Revised Penal Code.

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Clearly, the detention of complainant was legal at the beginning because he was arrested in flagrante delicto for carrying an unlicensed firearm and live ammunitions. His detention became illegal, however, because respondents failed to deliver him to the proper judicial authorities within the period specified under Article 125 of the Revised Penal Code.

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x x x In Grave Misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of established rule must be manifest. Otherwise, it is Simple Misconduct.

Since the elements of corruption, clear intent to violate the law or flagrant disregard of established rule are not manifest, they can only be held liable for Simple Misconduct with a penalty of Suspension of Three (3) Months without Pay since no mitigating or aggravating circumstances are present.[27] (Citations omitted)

Aggrieved, petitioners filed a petition for review before the CA.

The Ruling of the CA

On August 2, 2018, the CA rendered the assailed Decision[28] wherein it denied the petition but modified the Ombudsman's finding of Simple Misconduct to Simple Neglect of Duty.

The CA ruled as follows:

First, Fortunado's voluntary surrender did not give petitioners the license to detain him indefinitely. While such voluntary surrender may be likened to a waiver of Fortunato's rights under Article 125 of the RPC, his detention must still conform with the requirements under Section 7, Rule 112 of the Rules of Court on the prescribed period for preliminary investigation.[29]

And second, the records showed that Fortunado was charged with the murder of Judge Arles only on November 19, 2012, or almost five months after he voluntarily surrendered to petitioners on June 27, 2012.[30] However, in the absence of any allegation or finding of wrongful intent on the part of petitioners in relation to Fortunado's five-month detention, they should only be held administratively liable for Simple Neglect of Duty for their error in judgment and not Simple Misconduct.[31]

Petitioners filed a motion for reconsideration, but the CA denied it for lack of merit in the assailed Resolution[32]

dated August 29, 2019.

Aggrieved, petitioners are now before the Court raising the following issues:

I.THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONERS WERE DETAINING THE RESPONDENT INDEFINITELY.

II.THE HONORABLE COURT OF APPEALS ERRED IN FINDING PETITIONERS GUILTY OF SIMPLE NEGLIGENCE OF DUTY

III.THE HONORABLE COURT OF APPEALS ERRED IN CHARGING PETITIONERS WITH AN OFFENSE OTHER THAN WHAT THEY WERE SUMMONED TO ANSWER, IN VIOLATION OF THE BASIC TENETS OF DUE PROCESS.[33]

Our Ruling

To recall, the present case stemmed from Fortunado's complaint for the following: Arbitrary Detention, defined and penalized under Article 124 of the RPC; violation of RA 9745, or the "Anti-Torture Act of 2001;" and Grave Misconduct against petitioners. The cases for Arbitrary Detention and torture were docketed as OMB-V-C-14-0577 and OMB-V-C-14-0578,[34] respectively; while the case for Grave Misconduct was docketed as OMB-V-A-14-0428.[35] The Ombudsman rendered separate Resolutions for the criminal and administrative liability of petitioners.

Hence, the present case appealing petitioners' administrative liability via a Rule 45 petition.

It is settled that the Court is not a trier of facts, and it is not the Court's function to examine, review, or evaluate the evidence all over again.[36] In petitions for review under Rule 45, the appellate jurisdiction of the Court is limited only to questions of law.[37] However, the general rule admits of exceptions,[38] such as in the case wherein the factual findings and conclusions of law of the Ombudsman and the C A are conflicting and contradictory.

Petitioners maintain that they did not indefinitely detain Fortunado considering that the latter voluntarily sought protective custody from the NBI for fear of his safety and security in view of his alleged participation in Judge Arles' murder. They stress that Fortunado's detention is legal from the beginning up until the end, and Article 125[39] of the RPC, as amended, is not applicable in the case.[40]

Meanwhile, Fortunado denies that he voluntarily surrendered to petitioners and insists that the NBI agents abducted him on June 27, 2012.[41]

The records show that Fortunado admitted in his Sinumpaang Salaysay[42] dated July 3, 2012 (first Salaysay) that he voluntarily surrendered to the NBI Bacolod City as he feared for his life and safety when two of his companions, who had information about the murder of Judge Arles, went missing.[43] It bears noting that Fortunado only recanted his statements in the first Salaysay on January 14, 2013, or more than six months following its execution, after he was charged with the illegal possession of firearms and live ammunition on January 7, 2013.

Moreover, in his Sinumpaang Salaysay[44] dated January 14, 2013 (second Salaysay), Fortunado averred that he only executed the first Salaysay because he was subjected to torture while he was in the custody of the NBI Bacolod City. Not only is the timing of the second Salaysay highly suspect considering Fortunado's indictment and his mother Tessa's filing of a writ of amparo case[45] on his behalf, but also, there is simply no evidence to support his allegations of torture that supposedly made him sign the first Salaysay.

To stress, Fortunado failed to sufficiently establish that he was tortured in order to make him confess about the

murder of Judge Arles. On the contrary, the medical certificate^[46] issued by the NBI Medico-Legal Division – Manila showed that Fortunado suffered no injuries resulting from torture. More importantly, if Fortunado was truly tortured for a confession, the CHR agents who conducted a physical examination on him would have documented and reported the injuries he sustained because of it. Instead, Fortunado himself testified that the CHR agents simply did not come back after examining him for signs of torture.^[47]

It is settled that a notarized document enjoys the disputable presumption of regularity and carries the evidentiary weight conferred upon it as to its due execution.^[48] Here, Fortunado failed to prove by clear and convincing evidence^[49] that the first Salaysay, which was transcribed in his local vernacular and bore his countersigned, handwritten corrections, was not freely and validly executed.

Under the circumstances, the Court gives more weight to petitioners' defense that Fortunado voluntarily sought protective custody from the NBI Bacolod City in exchange for his statement about the murder of Judge Arles.

The question now is whether there is substantial evidence to hold petitioners administratively liable for their actions in relation to Fortunado's detention for six months without any criminal charges lodged against him.

After a careful study of the case, the Court rules in the negative.

Based on the records show that petitioners took custody of Fortunado on June 27, 2012, after he voluntarily surrendered himself to the NBI Bacolod City out of fear for his life and safety.^[50] Fortunado thereafter remained in petitioners' custody for 14 days, or until July 11, 2012, when he was transferred to the NBI Manila due to security concerns.^[51] Then, on August 5, 2012, Fortunado's mother filed the writ of amparo case on his behalf before the RTC to secure his release from detention.^[52]

Notably, while Fortunado opted to put himself in the custody of the NBI Bacolod City in the beginning, the voluntary nature of his confinement evidently changed after he was transferred to the NBI Manila and petitioners forwarded a request for preliminary investigation against him for the murder of Judge Arles on July 27, 2012. This is easily evinced by the very filing of the writ of amparo case on Fortunado's behalf with the RTC shortly thereafter. Given that Fortunado was already in the custody of the NBI when said request for preliminary investigation was made without him having been arrested, the only logical explanation is that: first, he actually voluntarily surrendered to petitioners; and second, he remained in detention while awaiting the results of the preliminary investigation being conducted against him.

Thus, Fortunado's voluntary surrender to the NBI Bacolod City may be considered as an implied waiver of his rights under Article 125 of the RPC given that he placed himself under the protective custody of petitioners despite the lack of any criminal charges against him at the time.

It is true that under Section 2(e) of RA 7438,^[53] a waiver of Article 125 must be express, meaning, it should be in writing and signed by the arrested or detained person in the presence of counsel. Nevertheless, the peculiar circumstances of the case at hand may be deemed as an exception pro hac vice to this rule considering that Fortunado himself sought protective custody from the NBI Bacolod City and he even voluntarily gave information regarding the murder of Judge Arles as stated in the first Salaysay. In other words, at the time of his voluntary surrender, Fortunado chose to be in the custody of the NBI Bacolod City for his own safety and security.

However, as the Court explained in *IBP Pangasinan Legal Aid v. Department of Justice*,^[54] such waiver of Article 125 must conform to the prescribed period for preliminary investigation under Section 7, Rule 112 of the Rules of Criminal Procedure, viz.:

The waiver of Article 125 of the RPC does not vest upon the DOJ, PPO, BJMP, and PNP the unbridled right to

indefinitely incarcerate an arrested person and subject him to the whims and caprices of the reviewing prosecutor of the DOJ. The waiver of Article 125 must coincide with the prescribed period for preliminary investigation as mandated by Section 7, Rule 112 of the Rules of Court. Detention beyond this period violated the accused's constitutional right to liberty.

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Accordingly, the Court rules that a detainee under such circumstances must be promptly released to avoid violation of the constitutional right to liberty, despite a waiver of Article 125, if the 15-day period (or the 30-day period in cases of violation of R.A. No. 9165) for the conduct of the preliminary investigation lapses. This rule also applies in cases where the investigating prosecutor resolves to dismiss the case, even if such dismissal was appealed to the DOJ or made the subject of a motion for reconsideration, reinvestigation or automatic review. The reason is that such dismissal automatically results in a *prima facie* finding of lack of probable cause to file an information in court and to detain a person.[55] (*Italics supplied*)

Simply stated, detention beyond the 15-day period (or the 30-day period in cases of violation of RA 9165, as amended) for the conduct of preliminary investigation constitutes as a violation of the detainee's constitutional right to liberty even if he or she waived, or is deemed to have impliedly waived, his or her right under Article 125, as in the case.

Here, the records reveal that Fortunado was charged with the illegal possession of firearms and live ammunition under PD 1866, as amended by RA 8294, only on January 7, 2013 or more than six months after he voluntarily surrendered to petitioners on June 27, 2012.[56] Then, Fortunado was indicted for the murder of Judge Arles on June 3, 2013 in the Information[57] dated November 19, 2012.

That being said, it is important to point out that Fortunado was only in the custody of petitioners for 14 days. Given the circumstances, the Court cannot hold petitioners accountable for the entire duration of Fortunado's detention considering that custody over his person was duly transferred to the NBI Manila on July 11, 2012.[58] As such, when Fortunado was in the custody of petitioners, the 15-day period for the conduct of a preliminary investigation had not lapsed and at that point in time, his constitutional right to liberty had not yet been violated.

Indeed, the Court cannot sanction petitioners for something that they no longer had any control of. While petitioners were directly responsible for Fortunado's detention from June 27, 2012 up to July 11, 2012, what happened afterwards when he was turned over to the NBI Manila was clearly out of their hands.

This is not to say that petitioners are completely free of any administrative liability in the case.

Based on the records, it appears that petitioners only forwarded a request for preliminary investigation to the NBI Manila in relation to the killing of Judge Arles on July 27, 2012, or 30 days after Fortunado's voluntary surrender to the NBI Bacolod City.[59]

Moreover, when Fortunado was taken into the custody of the NBI Bacolod City, he also surrendered the following items to petitioners: (a) one Colt .45 caliber pistol with Serial No. 526393; (b) six pieces of .45 live ammunition; (c) one .45 caliber pistol magazine; and (d) cash in the total amount of P39,000.00.[60] Upon verification, it turned out that Fortunado did not have the license or the authority to possess said firearm and live ammunitions.[61] Despite this, petitioners made the request for preliminary investigation to the Bacolod City Prosecutor's Office only on August 7, 2012, or 41 days after they confiscated the pistol and live ammunitions from Fortunado.[62]

By belatedly forwarding the requests for preliminary investigation to the appropriate offices, petitioners clearly failed to comply with the 15-day period provided under Section 7, Rule 112 of the Rules of Criminal Procedure

for the conduct of a preliminary investigation for both criminal charges against Fortunado. Worse, the records are bereft of any plausible explanation pertaining to such delay in turning over the case to the investigating prosecutors for preliminary investigation.

In *Siniclang v. Court of Appeals*,^[63] the Court defined Simple Neglect of Duty as "the failure of an employee to give proper attention to a required task or to discharge a duty due to carelessness or indifference."^[64] The offense then becomes Gross Neglect of Duty when such omission of diligence resulted from the employee's lack of even the slightest care, conscious indifference to the consequences, and/or flagrant and palpable breach of duty.^[65]

In the case, the failure of petitioners to promptly forward the subject requests for preliminary investigation to the investigating prosecutors is tantamount only to Simple Neglect of Duty in the absence of bad faith on their part. As the CA aptly noted, Fortunado neither alleged any wrongful intent against petitioners in his complaint nor proved it during the proceedings before the Ombudsman. To be sure, "[a]n act done in good faith, which constitutes only an error of judgment and for no ulterior motives and/or purposes, as in the present case, is merely Simple Negligence"^[66] that is akin to Simple Neglect of Duty.

Under Section 50(D)(1), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS), Simple Neglect of Duty is classified as a less grave offense that is punishable by suspension from office for a period of one month and one day to six months for the first offense.

All things considered, the Court is constrained to affirm the CA Decision finding petitioners guilty of Simple Neglect of Duty and imposing upon them the penalty of suspension from office for a period of two months without pay.

As earlier discussed at length, petitioners are indeed administratively liable for Simple Neglect of Duty, not for Fortunado's detention for more than six months without any criminal charges filed against him as the CA opined, but instead, for their failure to promptly forward the requests for preliminary investigation to the appropriate offices, in violation of the 15-day period provided under Section 7, Rule 112 of the Rules of Criminal Procedure for the conduct of a preliminary investigation against Fortunado.

Though it is true that petitioners' actions contributed in part to Fortunado's detention for six months without a criminal charge, they should not bear the full accountability therefor. Indeed, the duty of petitioners in the investigation of the case ended when they forwarded, albeit belatedly, the requests for preliminary investigation to the investigating prosecutors. After all, from that point on, the conduct of the preliminary investigation as well as the filing of the criminal charges against Fortunado fell squarely on the investigating prosecutors' responsibility under Sections 2 and 4, Rule 112 of the Rules of Criminal Procedure.

Finally, the penalty that the CA meted out against petitioners need not be modified as it is within the range allowed under the RRACCS.

WHEREFORE, the petition is DENIED. The Decision dated August 2, 2018 and the Resolution dated August 29, 2019 of the Court of Appeals in CA-G.R. SP No. 11272 are AFFIRMED.

SO ORDERED.

Gaerlan and Dimaampao, JJ., concur.

Caguioa, J., (Chairperson), see dissent.

Singh, J., see separate concurring opinion.

[1] Rollo, pp. 3-26.

[2] Id. at 38-46. Penned by Associate Justice Edward B. Contreras and concurred in by Associate Justices Edgardo L. Delos Santos (now a former Member of the Court) and Dorothy P. Montejo-Gonzaga.

[3] Id. at 45-46.

[4] Id. at 36-37.

[5] Id. at 37.

[6] CA rollo, pp. 64-65.

[7] Rollo, p. 38.

[8] Id. at 38-39. CA rollo, pp. 42-43.

[9] Rollo, p. 39.

[10] Id.

[11] Id.

[12] Id. at 39. CA rollo, p. 44.

[13] CA rollo, p. 44.

[14] Id.

[15] Id. at 105-110. Penned by Judge Fernando R. Elumba.

[16] Id. at 110.

[17] Id. at 45-46.

[18] Rollo, p. 40.

[19] CA rollo, pp. 42-55. Penned by Graft Investigation and Prosecution Officer I Katherine Arnoco Genovesa-Mahawan and approved by Deputy Ombudsman for the Visayas Paul Elmer M. Clemente.

[20] Id. at 54.

[21] Id. at 51.

[22] Id. at 149-150.

[23] Id. at 152-157. Issued by Prosecutor II Ma. Theresa B. Ditching and approved by City Prosecutor Armando P. Abanado.

[24] Entitled "An Act Amending the Provisions of Presidential Decree No. 1866, As Amended, Entitled 'Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing In, Acquisition or Disposition of Firearms, Ammunition or Explosives or Instruments Used in the Manufacture of Firearms, Ammunition or Explosives, and Imposing Stiffer Penalties for Certain Violations Thereof, and For Relevant Purposes,'" approved on June 6, 1997.

[25] CA rollo, pp. 158-159.

[26] Id. at 52.

[27] Id. at 51-54.

[28] Rollo, pp. 38-46.

[29] Id. at 42-44.

[30] Id. at 42.

[31] Id. at 42-45.

[32] Id. at 36-37.

[33] Id. at 12-13.

[34] CA rollo, pp. 300-314.

[35] Id. at 42-55.

[36] Land Bank of the Philippines v. Quilit, G.R. No. 194167, February 10, 2021, citing Carbonell v. Carbonell-Mendes, 762 Phil. 529, 536 (2015).

[37] Id.

[38] 1) When the findings are grounded entirely on speculation, surmises or conjectures; 2) when the inference made is manifestly mistaken, absurd or impossible; 3) when there is grave abuse of discretion; 4) when the judgment is based on a misapprehension of facts; 5) when the findings of facts are conflicting; 6) when in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; 7) when the findings are contrary to the trial court; 8) when the findings are conclusions without citation of specific evidence on which they are based; 9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; 10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and 11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. Republic v. Martinez, G.R. Nos. 224438-40, September 3, 2020, 949 SCRA 211, 220-221.

[39] Article 125 of the Revised Penal Code provides:

ART. 125. Delay in the delivery of detained persons to the proper judicial authorities. — The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent, and thirty-six (36) hours, for crimes or offenses punishable by afflictive or capital penalties, or their equivalent.

In every case, the person detained shall be informed of the cause of his detention and shall be allowed, upon his request, to communicate and confer at any time with his attorney or counsel.

[40] Rollo, p. 43.

[41] Id. at 171-172.

[42] CA rollo, pp. 160-164.

[43] Id. at 163.

[44] Id. at 111-114.

[45] Id. at 67-69.

[46] Id. at 205.

[47] See TSN, Spec. Proc. No. 12-2333, August 22, 2012, id. at 93.

[48] *Tortona v. Gregorio*, 823 Phil. 980, 991 (2018).

[49] See id. at 991-992.

[50] CA rollo, p. 8.

[51] Id. at 10.

[52] Id. at 67.

[53] Entitled, "An Act Defining Certain Rights of Persons Arrested, Detained or Under Custodial Investigation as well as the Duties of the Arresting, Detaining and Investigating Officers, and Providing Penalties for Violations Thereof," approved on April 27, 1992.

[54] 814 Phil. 440 (2017).

[55] Id. at 456-458.

[56] CA rollo, p. 158.

[57] Id. at 221-223.

[58] Id. at 44.

[59] Id. at 214-220.

[60] Id. at 146.

[61] Id. at 148.

[62] Id. at 149-150.

[63] G.R. Nos. 234766, 239855, 247366, & 256013, October 18, 2022.

[64] Id.

[65] Id.

[66] *Daplas v. Department of Finance*, 808 Phil. 763, 774 (2017).

DISSENTING OPINION CAGUIOA, J.:

This case stemmed from the complaint filed before the Office of the Ombudsman (OMB) by respondent Eddie Fortunado (Fortunado) against petitioners Syrus J. Aluzan (Aluzan), Special Investigator III at the National Bureau of Investigation (NBI) Bacolod City; Jose Henry L. Arellano (Arellano) Special Investigator II at the NBI Bacolod City; and Ferdinand M. Lavin (Lavin), former Chief of the NBI Bacolod City (collectively, petitioners) for Grave Misconduct and for violation of Article 124 of the Revised Penal Code.^[1]

In his complaint, Fortunado alleged that he was abducted on June 27, 2012 and taken to the NBI Bacolod City, where he was detained for his supposed involvement in the killing of Judge Henry Arles (Judge Arles), the

Presiding Judge of the Regional Trial Court (RTC) of Kabankalan[2] City, Negros Occidental. Fortunado further alleged that during his detention, he was tortured and forced to admit to the murder of Judge Arles in conspiracy with Alejandro Capunong and Jessie Daguia.[3]

On July 11, 2012, he was transferred from the NBI Bacolod City to the NBI Manila. Fortunado's mother thus filed a petition for a writ of amparo before the RTC of Bacolod City, praying for his release and for information on the cause of his detention. However, this petition was dismissed since the circumstances of Fortunado's detention were known, but it was nonetheless acknowledged that there was no legal basis for the continued confinement of Fortunado. Petitioners were therefore directed to release Fortunado.[4]

Petitioners, on the other hand, denied the allegations of Fortunado. They argued that Fortunado sought the protective custody of the NBI Bacolod City due to his involvement in the killing of Judge Arles. They also submitted that Fortunado was not subjected to any torture, as he was even examined by a physician from the Commission on Human Rights, who found that he was free from physical injuries.[5]

Thereafter, the OMB found petitioners guilty of Simple Misconduct and meted the penalty of suspension for three (3) months without pay.[6] On appeal, the Court of Appeals (CA) modified the liability of petitioners from Simple Misconduct to Simple Neglect of Duty.[7] Petitioners thus filed the present Petition for Review on Certiorari (Petition) before the Court in order to assail the CA's decision as to the administrative aspect of the complaint.

The ponencia denies the Petition. However, unlike the findings of the OMB and the CA, the ponencia anchors the administrative liability of petitioners on their failure to comply with the 15-day period for the conduct of a preliminary investigation under Section 7, Rule 112 of the Rules of Criminal Procedure.[8]

According to the ponencia, petitioners cannot be held liable for the prolonged detention of Fortunado because by voluntarily surrendering to the NBI Bacolod City, Fortunado is deemed to have waived his rights under Article 125 of the Revised Penal Code. The ponencia further opines that, in any case, Fortunado's voluntary surrender may constitute an exemption *pro hac vice*, especially in light of the peculiar circumstances of the present case.[9] Furthermore, considering that Fortunado was transferred from the NBI Bacolod City to the NBI Manila on July 11, 2012, Fortunado was detained by petitioners for only a period of 14 days. This period, the ponencia holds, is within the 15-day period for the conduct of the preliminary investigation so that petitioners cannot be held liable for the prolonged detention of Fortunado, especially after they relinquished his custody to the NBI Manila.[10]

I agree with the denial of the Petition, but I respectfully take exception to the ponencia's rationale.

The Court should not sanction the prolonged detention of an accused arrested without a warrant beyond the periods provided in Article 125 of the Revised Penal Code. Neither should the waiver of the periods therein be merely implied from the supposed voluntary surrender of the accused, nor should it justify a *pro hac vice* exemption. More importantly, even if there was a valid waiver of Fortunado's rights under Article 125 of the Revised Penal Code, his transfer from one detention facility to another does not suffice to exonerate petitioners from any administrative liability. Quite the opposite, petitioners should be held liable for Gross Neglect of Duty, as their actions clearly establish their flagrant and palpable breach of duty. I expound on these points below.

I.

There is no express waiver of
Fortunado's rights under Article
125 of the Revised Penal Code

As a preliminary matter, the ponencia rejects Fortunado's claim that he was abducted by agents of the NBI on June 27, 2012. The allegation of torture was also not given credence in light of the medical certificate issued by

the NBI Medico-Legal Division, certifying that Fortunado did not suffer from any injuries resulting from torture. Furthermore, the ponencia rules that the timing of Fortunado's recantation in his Sinumpaang Salaysay dated January 14, 2013, as well as his mother's filing of a petition for a writ of amparo on August 5, 2012, are "highly suspect." [11] The ponencia thus finds that Fortunado indeed voluntarily surrendered to the NBI Bacolod City in order to seek its protective custody. Such voluntary surrender is also considered a waiver of Fortunado's rights under Article 125 of the Revised Penal Code. Verily, petitioners were not obliged to immediately deliver Fortunado to the proper judicial authorities within the periods provided. [12]

With respect, I cannot fully subscribe to the findings and conclusion of the ponencia.

The ponencia's reliance on the timing of the petition for a writ of amparo and the recantation of Fortunado is tenuous. It may be gleaned from the records that Fortunado's mother was prompted to file the petition for a writ of amparo on August 5, 2012, [13] after learning that her son was no longer detained at the NBI Bacolod City, as he was transferred to the NBI Manila on July 11, 2012. [14] Thus, she could not have filed the petition earlier than the ponencia requires, since prior to the transfer of Fortunado, there is no basis for the amparo petition. In the same manner, neither does the mere lapse of time between the extrajudicial confession and the retraction of Fortunado's confession suffice to render doubtful the allegation that Fortunado was abducted and tortured by agents from the NBI Bacolod City. Ultimately, the ponencia must rely on the supporting evidence presented by Fortunado — or the lack thereof — to conclusively determine that his claim of abduction and torture are without merit.

At any rate, while there may be insufficient evidence to establish that Fortunado was abducted and tortured by agents of the NBI Bacolod City, much less by petitioners themselves, I respectfully disagree that the Court may simply infer the waiver of Fortunado's rights from his alleged voluntary surrender.

It must be emphasized that Article 125 of the Revised Penal Code is intended to safeguard against abuses of law enforcers which may result from the confinement of an accused without a criminal charge and without permitting the accused to post bail. [15] Its application finds particular significance in upholding the constitutional right to liberty which protects persons against being indefinitely held or detained without any charge. Thus, Article 125 enjoins law enforcers to deliver a person detained for some legal ground within the periods provided therein. The continued detention of a person beyond these periods may subject the law enforcer to criminal or administrative liability.

Here, the ponencia relies on the voluntary surrender of Fortunado to conclude that he had already waived his rights under Article 125 of the Revised Penal Code. This, however, completely disregards the fact that Fortunado himself has objected to the supposed voluntariness of his surrender to the NBI Bacolod City, claiming instead that he was abducted by NBI agents on June 27, 2012. To my mind, notwithstanding the contrary finding of the ponencia, Fortunado's denial of his surrender should, at the very least, caution the Court from adopting the view that he willingly waived his rights under Article 125 of the Revised Penal Code.

Petitioners significantly argue that Article 125 of the Revised Penal Code is inapplicable because Fortunado sought the protective custody of the NBI. [16] The ponencia does not reject this argument outright, ruling instead that the surrender of Fortunado should operate as a waiver since there were no criminal charges against him at that time. [17] Associate Justice Maria Filomena D. Singh goes further by opining that Article 125 is inapplicable in this case. According to Justice Singh, Fortunado sought the protective custody of the NBI agents in Bacolod City and there was no restraint of his liberty. She also points out that there were no acts on the part of NBI Bacolod City which indicate that Fortunado was held against his will. [18]

I respectfully disagree.

While the fact of Fortunado's abduction and torture is disputed, petitioners do not contest, as they actually allege, the following:

First, that the agents of the NBI Bacolod City took custody of Fortunado on June 27, 2012.[19]

Second, on the day Fortunado sought "protective custody" from the NBI Bacolod City, agents took Fortunado to their office, apprised him of his Constitutional rights, and provided a dedicated security detail 24 hours a day, seven days a week. Lavin, in his Judicial Affidavit for the amparo proceeding, even emphasized that Fortunado was apprised of his Miranda rights and his rights under the Anti-Torture Act.[20]

Third, on the same day that Fortunado was taken into "protective custody," an affidavit of seizure was executed, attesting to the seizure of firearms and ammunition from Fortunado. The seizing officer also stated that, upon verification with the relevant office of the Philippine National Police (PNP), Fortunado had no license or authority to possess the firearms and ammunition.[21]

By virtue of the execution of the affidavit of seizure, on the same day that Fortunado was allegedly taken into protective custody, petitioners already determined that he was in flagrante delicto liable for illegal possession of firearms and ammunition. This is clear from the last paragraph of the affidavit, which states that its purpose is "to attest to the veracity of the foregoing facts and for purposes of filing appropriate charges against Subject EDDIE FORTUNADO y MAGNO." [22] Sure enough, this affidavit was attached as supporting evidence in Lavin's belated request for Preliminary Investigation for illegal possession of firearms and ammunition against Fortunado.[23]

Thus, it is incongruous to argue that Fortunado was merely under protective custody and not otherwise deprived of liberty. For all intents and purposes, the protective custody of Fortunado was an arrest without a warrant for illegal possession of firearms and ammunition. His continued detention and the filing of the criminal charges against him patently belie the claim that petitioners were merely granting him "protection." Verily, given the foregoing circumstances, taking "protective custody" over Fortunado does not take his detention outside the purview of the mandatory periods under Article 125 of the Revised Penal Code.

To be sure, persons lawfully arrested without a warrant may waive their right under Article 125 of the Revised Penal Code and opt for the conduct of a preliminary investigation instead. In such instances, law enforcers may detain the accused for a period longer than that provided in the statute. On this point, Section 2(e) of Republic Act (R.A.) No. 7438[24] explicitly provides that:

[a]ny waiver by a person arrested or detained under the provisions of Article 125 of the Revised Penal Code, or under custodial investigation, shall be in writing and signed by such person in the presence of his [or her] counsel; otherwise the waiver shall be null and void and of no effect.[25] (Emphasis, italics, and underscoring supplied.)

There is no written waiver that has been produced. Fortunado executed two sworn statements several days after his alleged surrender — a Sinumpaang Salaysay[26] dated July 3, 2012, or five days from the time he was taken into custody of the NBI Bacolod City, and another Sinumpaang Salaysay[27] dated July 5, 2012, or a week counted from having been taken into custody. Despite acknowledging his right to remain silent and subsequently making admissions as to his participation in the killing of Judge Arles, a careful perusal of these sworn statements would reveal that Fortunado did not explicitly waive the periods under Article 125 of the Revised Penal Code.

Absent an express statement that Fortunado indeed waived the periods under Article 125, petitioners' duty to deliver him to the proper judicial authorities should subsist. At the risk of being repetitive, the duty that Article 125 of the Revised Penal Code creates is clear — it mandates law enforcers to deliver persons lawfully arrested without a warrant to the proper judicial authorities within the prescribed periods.

At this juncture, I respectfully emphasize that despite petitioners' claim of only taking protective custody of Fortunado, they nonetheless treated him as an ordinary accused and justified his detention without a warrant by virtue of the affidavit of seizure of firearms and ammunition. Given the ambiguous circumstances of Fortunado's custody and detention, there is no reason for the ponencia to simply presume that a waiver was made.

In all, the question of whether petitioners should comply with the mandatory periods under Article 125 rests on the ponencia's determination of whether Fortunado was taken into custody for an offense without a warrant, or he was simply in protective custody without any restraint on his liberty. In other words, the ponencia should either hold that there was an explicit waiver of the periods under Article 125 of the Revised Penal Code, or that the waiver may be dispensed with because there was no detention in the first place. It cannot abdicate this duty by choosing the middle ground and applying a *pro hac vice* exemption. A waiver, as an exception to the positive duty of law enforcers under Article 125, should be duly established, being a derogation of a constitutionally guaranteed right. To emphasize anew, any waiver under Article 125 of the Revised Penal Code must be expressly and unequivocally made by the accused, especially since this extends the period during which he or she is deprived of liberty without knowing the criminal charge against him or her, and consequently, without the ability to post bail. Thus, a waiver cannot simply be inferred, more so under this particular case where the circumstances that led to Fortunado's detention are unclear. To rule otherwise, even *pro hac vice*, would effectively dilute the purpose behind Article 125 of the Revised Penal Code — that is, to ensure that individuals are not detained indefinitely without a criminal charge.

II.

It is undisputed that Fortunado was detained for six months without a criminal charge

The following dates are not disputed:

(1)

On June 27, 2012, law enforcers obtained custody over the person of Fortunado;

(2)

On January 7, 2013, he was charged with illegal possession of firearms and live ammunition, punishable under Presidential Decree No. 1866; and

(3)

On June 3, 2013, he was charged for the murder of Judge Arles.

From the foregoing, it is clear that Fortunado was detained for over six months without any criminal charge, until the Information for illegal possession of firearms was filed in court on January 7, 2013.[28] This period is evidently beyond the 36-hour period in Article 125 of the Revised Penal Code for offenses punishable by afflictive or capital penalties.

Worse, even if the Court were to assume, as the ponencia does, that Fortunado waived his rights under Article 125 of the Revised Penal Code, petitioners also failed to comply with the 15-day period for preliminary investigation under Section 7, Rule 112 of the Revised Rules on Criminal Procedure.[29]

The ponencia aptly cites the Court's ruling in *Integrated Bar of the Philippines Pangasinan Legal Aid v. Department of Justice*,[30] to wit:

The waiver of Article 125 of the RPC does not vest upon the DOJ, PPO, BJMP, and PNP the unbridled right to indefinitely incarcerate an arrested person and subject him [or her] to the whims and caprices of the reviewing prosecutor of the DOJ. The waiver of Article 125 must coincide with the prescribed period for preliminary investigation as mandated by Section 7, Rule 112 of the Rules of Court. Detention beyond this period violates the accused's constitutional right to liberty.

Stated differently, the waiver of the effects of Article 125 of the RPC is not a license to detain a person *ad infinitum*. Waiver of a detainee's right to be delivered to proper judicial authorities as prescribed by Article 125 of the RPC does not trump his [or her] constitutional right in cases where probable cause was initially found wanting by reason of the dismissal of the complaint filed before the prosecutor's office even if such dismissal is on appeal, reconsideration, reinvestigation or on automatic review. Every person's basic right to liberty is not to be construed as waived by mere operation of Section 7, Rule 112 of the Rules of Court. The fundamental law provides limits and this must be all the more followed especially so that detention is proscribed absent probable cause.[31] (Emphasis supplied)

However, the ponencia rules that the transfer of Fortunado from the NBI Bacolod City to the NBI Manila is material in determining petitioners' administrative liability for this delay. Since Fortunado's place of detention was transferred on July 11, 2012 to the NBI Manila, the ponencia holds that petitioners, being officers assigned in the NBI Bacolod City, no longer had any control over the delay in the filing of criminal charges.[32]

In the same breath, however, the ponencia holds petitioners liable for Simple Neglect of Duty because they forwarded the request for preliminary investigation for the murder of Judge Arles to the NBI Manila only on July 27, 2012. The request for preliminary investigation for the illegal possession of firearms and live ammunition was also made to the Bacolod City Prosecutor's Office only on August 7, 2012. The ponencia explains:

Based on the records, it appears that petitioners only forwarded the request for preliminary investigation to the NBI Manila in relation to the killing of Judge Arles on July 27, 2012, or 30 days after Fortunado's voluntary surrender to the NBI Bacolod City.

Moreover, when Fortunado was taken into the custody of the NBI Bacolod City, he also surrendered the following items to petitioners: (a) one Colt .45 caliber pistol with Serial No. 526393; (b) six pieces of .45 live ammunition; (c) one .45 caliber pistol magazine; and (d) cash in the total amount of P39,000.00. Upon verification, it turned out that Fortunado did not have the license or the authority to possess said firearm and live ammunitions. Despite this, petitioners made the request for preliminary investigation to the Bacolod City Prosecutor's Office only on August 7, 2012, or 41 days after they confiscated the pistol and live ammunitions from Fortunado.[33] (*Italics and underscoring in the original*)

Needless to state, both requests were made after Fortunado was transferred. Thus, despite handing over the custody of Fortunado to the NBI Manila and purportedly having no control over the delay, petitioners still neglected to comply with their duty to ensure that the requisite periods for the filing of the criminal charge and for the conduct of the preliminary investigation were followed. I therefore disagree with the ruling of the CA finding petitioners liable only for Simple Neglect of Duty. To my mind, the persistent delay in the filing of charges against Fortunado is not mere carelessness or indifference. Petitioners' omission should be deemed a flagrant and palpable breach of duty that should elevate their liability to Gross Neglect of Duty.

To be sure, there was no justification for, much less an attempt to explain, the cause of these delays. Petitioners waited for 40 days since they seized the illegal firearms and ammunition from Fortunado on June 27, 2012,[34] before filing the complaint with the prosecutor on August 7, 2012.[35] They let this period lapse, despite having already verified with the PNP's Firearms and Explosives Division that Fortunado did not possess the necessary license for the seized items on the same day that these were confiscated.[36] Furthermore, since Fortunado's transfer on July 11, 2012, they allowed the period of 16 days to expire before forwarding their request for

preliminary investigation for murder to their colleagues in the NBI Manila.

While it may be true that petitioners are not solely to blame, the fact remains that Fortunado was detained for about six months without a criminal charge due to petitioners' belated filing of the criminal complaints with the prosecutor. Their wanton disregard of the prescribed periods surely contributed to the delay in the indefinite detention of Fortunado, which resulted to no less than the violation of his constitutional right to due process. The Court should not sanction their futile attempt to excuse their patent infringement of a constitutional right by relying on their inconsistent claim of taking "protective custody" of Fortunado, while nonetheless detaining him for two criminal offenses, the complaints for which they failed to timely initiate. Thus, notwithstanding of Fortunado's transfer to the NBI Manila, the indefinite detention of Fortunado is ultimately attributable to petitioners' own delay in proceeding with the investigation.

Under the Revised Rules on Administrative Cases in the Civil Service,[37] Gross Neglect of Duty is a grave offense punishable by dismissal from the service. Accordingly, I respectfully submit that the penalty imposed by the CA should be modified from suspension for two (2) months without pay to dismissal from the service.

In all, I VOTE to DENY the Petition, and to MODIFY the ruling of the Court of Appeals to hold petitioners liable for GROSS NEGLIGENCE OF DUTY.

[1] Ponencia, pp. 1-2.

[2] Spelled as "Kabangkalan" in some parts of the record.

[3] Ponencia, pp. 2-3.

[4] Id. at 3, rollo, pp. 138-139, Decision of Br. 42, Regional Trial Court of Bacolod City dated December 26, 2012 in Spec. Proc. No. 12-2333 penned by Judge Fernando R. Elumba.

[5] Ponencia, p. 4.

[6] Id.

[7] Id. at 6.

[8] Id. at 10-13.

[9] Id. at 10.

[10] Id. at 11-12.

[11] Ponencia, pp. 8-9.

[12] Id. at 9-12.

[13] Rollo, p. 171, Comment of Fortunado dated October 12, 2020.

[14] Id. at 39, Decision of the Court of Appeals dated August 2, 2018 in CA-G.R. SP No. 11272 penned by Associate Justice Edward B. Contreras, with Associate Justices Edgardo L. Delos Santos (retired Member of the Court) and Dorothy P. Montejo-Gonzaga concurring.

[15] See Integrated Bar of the Philippines Pangasinan Legal Aid v. Department of Justice, 814 Phil. 440, 455 (2017).

[16] Rollo, p. 16, Petition.

[17] Ponencia, pp. 9-11.

[18] Separate Concurring Opinion Associate Justice Maria Filomena D. Singh, p. 1.

[19] Rollo, p. 6, Petition.

[20] Id. at 155-159.

[21] Id. at 80. Affidavit of Seizure.

[22] Id. Emphasis supplied.

[23] Id. at 81-82.

[24] Titled "AN ACT DEFINING CERTAIN RIGHTS OF PERSON ARRESTED, DETAINED OR UNDER CUSTODIAL INVESTIGATION AS WELL AS THE DUTIES OF THE ARRESTING, DETAINING AND INVESTIGATING OFFICERS AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF," or the Rights of Persons Arrested, Detained or Under Custodial Investigation, dated April 27, 1992.

[25] See also REVISED RULES ON CRIMINAL PROCEDURE, Rule 112, Sec. 6, as amended by A.M. No. 05-8-26-SC:

Before the complaint or information is filed, the person arrested may ask for a preliminary investigation in accordance with this Rule, but he [or she] must sign a waiver of the provisions of Article 125 of the Revised Penal Code, as amended, in the presence of his [or her] counsel. Notwithstanding the waiver, he [or she] may apply for bail and the investigation must be terminated within fifteen (15) days from its inception.

[26] Rollo, pp. 92-96.

[27] Id. at 97-99.

[28] Ponencia, p. 11.

[29] Id. at 10-11.

[30] Supra note 15.

[31] Id. at 456.

[32] Ponencia, p. 12.

[33] Id.

[34] Rollo, p. 78. Inventory of Items Seized/Surrendered.

[35] Id. at 84, Resolution of the Bacolod City Prosecutor's Office dated December 21, 2012 in NPS No. VI-INV-12H-872 penned by Prosecutor II Ma. Theresa B. Ditching, approved by City Prosecutor Armando P. Abanado.

[36] Id. at 80, Affidavit of Seizure dated July 27, 2012.

[37] REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE, Rule 10. Sec. 46(A)(2).

SEPARATE CONCURRING OPINION
SINGH, J.:

I concur in the result, however I disagree as to the application of Article 125 of the Revised Penal Code (RPC) and its implied waiver in this case.

The facts of the case show that Eddie Fortunado (Fortunado) voluntarily sought the protective custody of the National Bureau of Investigation (NBI) in Bacolod City. In this, Fortunado was motivated by a perceived fear for his life and safety when his two companions went missing;^[1] and in exchange for protection, he volunteered to provide information about the killing of Judge Arles.^[2] Fortunado, therefore, was not under arrest and neither was he placed under arrest.

Since he sought protective custody himself, the NBI Bacolod City did not hold Fortunado against his will. Neither does the factual milieu of the case show that there were acts on the part of NBI Bacolod City indicating that it held him against his will, i.e., with restraint on his liberty, for other lawful cause.

Article 125 of the RPC^[3] provides:

Article 125. Delay in the delivery of detained persons to the proper judicial authorities. – The penalties provided [for Arbitrary Detention under Article 124] shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of: twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent; and thirty-six (36) hours, for crimes or offenses punishable by afflictive or capital penalties, or their equivalent.

In every case, the person detained shall be informed of the cause of his detention and shall be allowed, upon his request, to communicate and confer at any time with his attorney or counsel.

The law well establishes that the safeguards under Article 125 of the RPC apply when a person is arrested or detained without the benefit of a warrant. The statute subsequently requires that the detained person be charged before judicial authority within the required periods. The purpose for this is precisely to protect the constitutional right to liberty of individuals who may have been held for a legal ground without a warrant.^[4]

Contrary to the discussion in the ponencia, there is no factual basis to extend the coverage of Article 125 to include persons who, without facing any charges, have sought the protection of law enforcement authorities as in the case of Fortunado.

As the ponencia itself points out, in echoing the findings of the Court of Appeals, Fortunado "placed himself in the protective custody of the petitioners despite the lack of any criminal charges against him at the time."^[5] Therefore, Fortunado could not have voluntarily surrendered, and no waiver of Article 125 is necessary, whether implied or express. He simply sought protection.

It was only after Fortunado's voluntary stay for 14 days and his subsequent transfer to NBI Manila that criminal charges were brought against him.^[6]

It is important to note that clarity on the circumstances surrounding Fortunado's stay in NBI Bacolod is central to the determination of the liability of the NBI Bacolod officers (petitioners). In his Dissenting Opinion, Associate Justice Alfredo Benjamin S. Caguioa opines that while the petitioners are not solely to blame, their negligence contributed to the indefinite detention of Fortunado.^[7]

In this, I concur that the petitioners share the responsibility for what happened to Fortunado. However, I disagree with the conclusion that this liability should be for the entire period of about six (6) months when petitioners only had actual custody over Fortunado for 14 days. It is my view that the penalty for the petitioners' neglect of duty should only relate to the period where they had control over Fortunado, and should not include the time spent in NBI Manila.

This case involves what Justice Caguioa in his Dissenting Opinion recognizes as ambiguous circumstances over Fortunado's custody and detention.[8] With this ambiguity, the facts only clearly establish the responsibility of the petitioners over Fortunado during his protective custody and consequent delay in the request for preliminary investigation. To my mind, the factual milieu therefore supports a conclusion that the petitioners are liable for Simple Neglect of Duty only.

In fine, there was no detention or warrantless arrest to speak of at the time when Fortunado was only in protective custody. Hence, there was no violation of Article 125. In my measured view, his stay in protective custody being voluntarily made, Fortunado was not arrested nor detained at that time, and therefore there was no violation of Article 125 of the Revised Penal Code.

I thus vote with the ponente to DENY the Petition but for the reasons elucidated above.

[1] Ponencia, p. 9.

[2] Id, at 10.

[3] REVISED PENAL CODE (1930), art. 125, as amended by Executive Orders Nos. 59 (1986), and 272 (1987).

[4] *Leviste v. Alameda, et al.* 640 PHL 620-651 (2010); *Agbay v. Deputy Ombudsman for the Military* 369 PHIL 174-191 (1999); *Lino v. Fugoso*, 77 PHL 933-983 (1947); *Laurel v. Misa* 76 PHIL 372-411 (1946); See also *Calleja v. Executive Secretary* G.R. Nos. 252578, 252579, 252580, 252585, 252613, 252623, 252624, 252646, 252702, 252726, 252733, 252736, 252741, 252747, 252755, 252759, 252765, 252767, 252768, 16663, 252802, 252809, 252903, 252904, 252905, 252916, 252921, 252984, 253018, 253100, 253118, 253124, 253242, 253252, 253254, 254191 & 253420 [December 7, 2021].

[5] Ponencia, p. 10.

[6] Id, at 11.

[7] Dissenting Opinion of Associate Justice Alfredo Benjamin S. Caguioa, pp. 8-9.

[8] Id, at p. 6.

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