

IN THE MATTER OF THE PETITION FOR HABEAS CORPUS OF ROBERTO UMIL, ROLANDO DURAL AND RENATO VILLANUEVA, MANOLITA O. UMIL AND NICANOR P. DURAL, FELICITAS V. SESE, PETITIONERS, VS. ...

G.R. No. 81567. October 03, 1991

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PER CURIAM:

Before the Court are separate motions filed by the petitioners in the above-entitled petitions, seeking reconsideration of the Court's decision promulgated on 9 July 1990 (the decision, for brevity) which dismissed the petitions, with the following dispositive part:

"WHEREFORE, the petitions are hereby DISMISSED, except that in G.R. No. 85727 (Espiritu vs. Lim), the bail bond for petitioner's provisional liberty is hereby ordered reduced from P60,000.00 to P10,000.00. No costs."

The Court avails of this opportunity to clarify its ruling and begins with the statement that the decision did not rule — as many misunderstood it to do — that mere suspicion that one is a Communist Party or New People's Army member is a valid ground for his arrest without warrant. Moreover, the decision merely applied long existing laws to the factual situations obtaining in the several petitions. Among these laws are those outlawing the Communist Party of the Philippines (CPP) and similar organizations and penalizing membership therein (to be dealt with shortly). It is elementary, in this connection, that if these laws no longer reflect the thinking or sentiment of the people, it is Congress as the elected representative of the people — not the Court — that should repeal, change or modify them.

In their separate motions for reconsideration, petitioners, in sum, maintain:

1. That the assailed decision, in upholding the validity of the questioned arrests made without warrant, and in relying on the provisions of the Rules of Court, particularly Section 5 of Rule 113 (Arrest), disregards the fact that such arrests violated the constitutional rights of the persons arrested;
2. That the doctrine laid down in *Garcia vs. Enrile*[1] and *Ilagan vs. Enrile*[2] should be abandoned;
3. That the decision erred in considering the admissions made by the persons arrested as to their membership in the Communist Party of the Philippines/New People's Army, and their ownership of the unlicensed firearms, ammunitions and subversive documents found in their possession at the time of arrest, inasmuch as those confessions do not comply with the requirements on admissibility of extrajudicial admissions;
4. That the assailed decision is based on a misappreciation of facts;
5. That G.R. No. 81567 (the Umil case) should not be deemed moot and academic.

We find no merit in the motions for reconsideration.

It can not be overlooked that these are petitions for the issuance of the writ of habeas corpus, filed by petitioners

under the Rules of Court.[3] The writ of habeas corpus exists as a speedy and effective remedy to relieve persons from unlawful restraint.[4] Therefore, the function of the special proceedings of habeas corpus is to inquire into the legality of one's detention,[5] so that if detention is illegal, the detainee may be ordered forthwith released.

In the petitions at bar, to ascertain whether the detention of petitioners was illegal or not, the Court before rendering the decision dated 9 July 1990, looked into whether their questioned arrests without warrant were made in accordance with law. For, if the arrests were made in accordance with law, it would follow that the detention resulting from such arrests is also in accordance with law.

There can be no dispute that, as a general rule, no peace officer or person has the power or authority to arrest anyone without a warrant of arrest, except in those cases expressly authorized by law.[6] The law expressly allowing arrests without warrant is found in Section 5, Rule 113 of the Rules of Court which states the grounds upon which a valid arrest, without warrant, can be conducted.

In the present cases, the focus is understandably on Section 5, paragraphs (a) and (b) of the said Rule 113, which read:

"SEC. 5. Arrest without warrant; when lawful. — A peace officer or a private person may, without a warrant, arrest a person;

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it; and

x x x" (*italics supplied*).

The Court's decision of 9 July 1990 rules that the arrest of Rolando Dural (G.R. No. 81567) without warrant is justified as it can be said that, within the contemplation of Section 5(a), Rule 113, he (Dural) was committing an offense, when arrested, because Dural was arrested for being a member of the New People's Army, an outlawed organization, where membership is penalized,[7] and for subversion which, like rebellion is, under the doctrine of *Garcia vs. Enrile*,[8] a continuing offense, thus:

"The crimes of insurrection or rebellion, subversion, conspiracy or proposal to commit such crimes, and other crimes and offenses committed in the furtherance (sic) on the occasion thereof, or incident thereto, or in connection therewith under Presidential Proclamation No. 2045, are all in the nature of continuing offenses which set them apart from the common offenses, aside from their essentially involving a massive conspiracy of nationwide magnitude. x x x."

Given the ideological content of membership in the CPP/NPA which includes armed struggle for the overthrow of organized government. Dural did not cease to be, or became less of a subversive, FOR PURPOSES OF ARREST, simply because he was, at the time of arrest, confined in the St. Agnes Hospital. Dural was identified as one of several persons who the day before his arrest, without warrant, at the St. Agnes Hospital, had shot two (2) CAPCOM policemen in their patrol car. That Dural had shot the two (2) policemen in Caloocan City as part of his mission as a "sparrow" (NPA member) did not end there and then, Dural, given another opportunity, would have shot or would shoot other policemen anywhere as agents or representatives of organized government. It is in this sense that subversion like rebellion (or insurrection) is perceived here as a continuing offense. Unlike other so-called "common" offenses, i.e. adultery, murder, arson, etc., which generally end upon their commission, subversion and rebellion are anchored on an ideological base which compels the repetition of the same acts of lawlessness and violence until the overriding objective of overthrowing organized government is attained.

Nor can it be said that Dural's arrest was grounded on mere suspicion by the arresting officers of his membership in the CPP/NPA. His arrest was based on "probable cause", as supported by actual facts that will be shown hereafter.

Viewed from another but related perspective, it may also be said, under the facts of the Umil case, that the arrest of Dural falls under Section 5, paragraph (b), Rule 113 of the Rules of Court, which requires two (2) conditions for a valid arrest without warrant: first, that the person to be arrested has just committed an offense, and second, that the arresting peace officer or private person has personal knowledge of facts indicating that the person to be arrested is the one who committed the offense. Section 5(b), Rule 113, it will be noted, refers to arrests without warrant, based on "personal knowledge of facts" acquired by the arresting officer or private person.

It has been ruled that "personal knowledge of facts", in arrests without warrant must be based upon probable cause, which means an actual belief or reasonable ground of suspicion.[9]

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.[10] A reasonable suspicion therefore must be founded on probable cause, coupled with good faith on the part of the peace officers making the arrest.[11]

These requisites were complied with in the Umil case and in the other cases at bar.

In G.R. No. 81567 (Umil case), military agents, on 1 February 1988, were dispatched to the St. Agnes Hospital, Roosevelt Avenue, Quezon City, to verify a confidential information which was received by their office, about "sparrow man" (NPA member) who had been admitted to the said hospital with a gunshot wound; that the information further disclosed that the wounded man in the said hospital was among the five (5) male "sparrows" who murdered two (2) Capcom mobile patrols the day before, or on 31 January 1988 at about 12:00 o'clock noon, before a road hump along Macanining St., Bagong Barrio, Caloocan City; that based on the same information, the wounded man's name was listed by the hospital management as "Ronnie Javellon", twenty-two (22) years old of Block 10, Lot 4, South City Homes, Biñan, Laguna.[12]

Said confidential information received by the arresting officers, to the effect that an NPA member ("sparrow unit") was being treated for a gunshot wound in the named hospital, is deemed reasonable and with cause as it was based on actual facts and supported by circumstances sufficient to engender a belief that an NPA member was truly in the said hospital. The actual facts supported by circumstances are: first — the day before, or on 31 January 1988, two (2) CAPCOM soldiers were actually killed in Bagong Barrio, Caloocan City by five (5) "sparrows" including Dural; second — a wounded person listed in the hospital records as "Ronnie Javellon" was actually then being treated in St. Agnes Hospital for a gunshot wound; third — as the records of this case disclosed later, "Ronnie Javellon" and his address entered in the hospital records were fictitious and the wounded man was in reality Rolando Dural.

In fine, the confidential information received by the arresting officers merited their immediate attention and action and, in fact, it was found to be true. Even the petitioners in their motion for reconsideration,[13] believe that the confidential information of the arresting officers to the effect that Dural was then being treated in St. Agnes Hospital was actually received from the attending doctor and hospital management in compliance with the directives of the law,[14] and, therefore, came from reliable sources.

As to the condition that "probable cause" must also be coupled with acts done in good faith by the officers who make the arrest, the Court notes that the peace officers who arrested Dural are deemed to have conducted the same

in good faith, considering that law enforcers are presumed to regularly perform their official duties. The records show that the arresting officers did not appear to have been ill-motivated in arresting Dural.[15] It is, therefore clear that the arrest, without warrant, of Dural was made in compliance with the requirements of paragraphs (a) and (b) of Section 5, Rule 113.

Parenthetically, it should be mentioned here that a few days after Dural's arrest, without warrant, an information charging double murder with assault against agents of persons in authority was filed against Dural in the Regional Trial Court of Caloocan City (Criminal Case No. C-30112). He was thus promptly placed under judicial custody (as distinguished from custody of the arresting officers). On 31 August 1988, he was convicted of the crime charged and sentenced to reclusion perpetua. The judgment of conviction is now on appeal before this Court in G.R. No. 84921.

As to Amelia Roque and Wilfredo Buenaobra (G.R. Nos. 84581-82), Domingo Anonuevo and Ramon Casiple (G.R. Nos. 84583-84), and Vicky Ocaya (G.R. No. 83162), their arrests, without warrant are also justified. They were searched pursuant to search warrants issued by a court of law and were found with unlicensed firearms, explosives and/or ammunition in their persons. They were, therefore, caught in flagrante delicto which justified their outright arrests without warrant, under Sec. 5(a), Rule 113, Rules of Court. Parenthetically, it should be mentioned here that a few days after their arrests without warrant, informations were filed in courts against said petitioners, thereby placing them within judicial custody and disposition. Furthermore, Buenaobra mooted his own petition for habeas corpus by announcing to this Court during the hearing of these petitions that he had chosen to remain in detention in the custody of the authorities.

More specifically, the antecedent facts in the "in flagrante" cases are:

1. On 27 June 1988, the military agents received information imparted by a former NPA about the operations of the CPP and NPA in Metro Manila and that a certain house occupied by one Renato Constantino, located in the Villaluz Compound, Molave St., Marikina Heights, Marikina, Metro Manila was being used as their safehouse; that in view of this information, the said house was placed under military surveillance and on 12 August 1988, pursuant to a search warrant duly issued by court, a search of the house was conducted; that when Renato Constantino was then confronted he could not produce any permit to possess the firearms, ammunitions, radio and other communications equipment, and he admitted that he was a ranking member of the CPP.[16]
2. In the case of Wilfredo Buenaobra, he arrived at the house of Renato Constantino in the evening of 12 August 1988, and admitted that he was an NPA courier and he had with him letters to Renato Constantino and other members of the rebel group.
3. On the other hand, the arrest of Amelia Roque was a consequence of the arrest of Buenaobra who had in his possession papers leading to the whereabouts of Roque;[17] that, at the time of her arrest, the military agents found subversive documents and live ammunitions, and she admitted then that the documents belonged to her.[18]
4. As regards Domingo Anonuevo and Ramon Casiple they were arrested without warrant on 13 August 1988, when they arrived at the said house of Renato Constantino in the evening of said date; that when the agents frisked them, subversive documents, and loaded guns were found in the latter's possession but failing to show a permit to possess them.[19]
5. With regard to Vicky Ocaya, she was arrested without warrant when she arrived (on 12 May 1988) at the premises of the house of one Benito Tiamzon who was believed to be the head of the CPP/NPA, and whose house was subject of a search warrant duly issued by the court. At the time of her arrest without warrant the agents of the PC-Intelligence and Investigation found ammunitions and subversive documents in the car of

Ocaya.[20]

It is to be noted in the above cases (Roque, Buenaobra, Anonuevo, Casiple and Ocaya) that the reason which compelled the military agents to make the arrests without warrant was the information given to the military authorities that two (2) safehouses (one occupied by Renato Constantino and the other by Benito Tiamzon) were being used by the CPP/NPA for their operations, with information as to their exact location and the names of Renato Constantino and Benito Tiamzon as residents or occupants thereof.

And at the time of the actual arrests, the following circumstances surrounded said arrests (of Roque, Buenaobra, Anonuevo and Casiple), which confirmed the belief of the military agents that the information they had received was true and the persons to be arrested were probably guilty of the commission of certain crimes; first: search warrant was duly issued to effect the search of the Constantino safehouse; second: found in the safehouse was a person named Renato Constantino, who admitted that he was a ranking member of the CPP, and found in his possession were unlicensed firearms and communications equipment; third: at the time of their arrests, in their possession were unlicensed firearms, ammunitions and/or subversive documents, and they admitted ownership thereof as well as their membership in the CPP/NPA. And then, shortly after their arrests, they were positively identified by their former comrades in the organization as CPP/NPA members. In view of these circumstances, the corresponding informations were filed in court against said arrested persons. The records also show that, as in the case of Dural, the arrests without warrant made by the military agents in the Constantino safehouse and later in the Amelia Roque house, do not appear to have been ill-motivated or irregularly performed.

With all these facts and circumstances existing before, during and after the arrest of the afore-named persons (Dural, Buenaobra, Roque, Anonuevo, Casiple and Ocaya), no prudent man can say that it would have been better for the military agents not to have acted at all and made any arrests. That would have been an unpardonable neglect of official duty and a cause for disciplinary action against the peace officers involved.

For, one of the duties of law enforcers is to arrest law-breakers in order to place them in the hands of executive and judicial authorities upon whom devolves the duty to investigate the acts constituting the alleged violation of law and to prosecute and secure the punishment there-for.[21] An arrest is therefore in the nature of an administrative measure. The power to arrest without warrant is without limitation as long as the requirements of Section 5, Rule 113 are met. This rule is founded on an overwhelming public interest in peace and order in our communities.

In ascertaining whether the arrest without warrant is conducted in accordance with the conditions set forth in Section 5, Rule 113, this Court determines not whether the persons arrested are indeed guilty of committing the crime for which they were arrested.[22] Not evidence of guilt, but "probable cause" is the reason that can validly compel the peace officers, in the performance of their duties and in the interest of public order, to conduct an arrest without warrant.[23]

The courts should not expect of law-enforcers more than what the law requires of them. Under the conditions set forth in Section 5, Rule 113, particularly paragraph (b) thereof, even if the arrested persons are later found to be innocent and acquitted, the arresting officers are not liable.[24] But if they do not strictly comply with the said conditions, the arresting officers can be held liable for the crime of arbitrary detention,[25] for damages under Article 32 of the Civil Code[26] and/or for other administrative sanctions.

In G.R. No. 85727, Espiritu, on 23 November 1988, was arrested without warrant, on the basis of the attestation of certain witnesses: that about 5:00 o'clock in the afternoon of 22 November 1988, at the corner of Magsaysay Boulevard and Velencia St., Sta. Mesa, Manila, Espiritu spoke at a gathering of drivers and sympathizers, where he said, among other things:

"Bukas tuloy ang welga natin x x x hanggang sa magkagulo na."[27] (*italics supplied*)

and that the police authorities were present during the press conference held at the National Press Club (NPC) on 22 November 1988 where Espiritu called for a nationwide strike (of jeepney and bus drivers) on 23 November 1988.[28] Espiritu was arrested without warrant, not for subversion or any "continuing offense," but for uttering the above-quoted language which, in the perception of the arresting officers, was inciting to sedition.

Many persons may differ as to the validity of such perception and regard the language as falling within free speech guaranteed by the Constitution. But, then, Espiritu had not lost the right to insist, during the pre-trial or trial on the merits, that he was just exercising his right to free speech regardless of the charged atmosphere in which it was uttered. But, the authority of the peace officers to make the arrest, without warrant, at the time the words were uttered, or soon thereafter, is still another thing. In the balancing of authority and freedom, which obviously becomes difficult at times, the Court has, in this case, tilted the scale in favor of authority but only for purposes of the arrest (not conviction). Let it be noted that the Court has ordered the bail for Espiritu's release to be reduced from P60,000.00 to P10,000.00.

Let it also be noted that supervening events have made the Espiritu case moot and academic. For Espiritu had before arraignment asked the court a quo for re-investigation. The plea was granted and at the re-investigation, the peace officers did not appear. Because of this development, the defense asked the court a quo at the resumption of the hearings to dismiss the case. Case against Espiritu (Criminal Case No. 88-68385) has been provisionally dismissed and his bail bond cancelled.

In G.R. No. 86332 (Nazareno), the records show that in the morning of 14 December 1988, Romulo Bunye II was killed by a group of men in Alabang, Muntinlupa, Metro Manila; that at about 5:00 o'clock in the morning of 28 December 1988, Ramil Regala, one of the suspects in the said killing, was arrested and he pointed to Narciso Nazareno as one of his companions during the killing of Bunye II; that at 7:20 of the same morning (28 December 1988), the police agents arrested Nazareno, without warrant, for investigation.[29]

Although the killing of Bunye II occurred on 14 December 1988, while Nazareno's arrest without warrant was made only on 28 December 1988, or 14 days later, the arrest falls under Section 5(b) of Rule 113, since it was only on 28 December 1988 that the police authorities came to know that Nazareno was probably one of those guilty in the killing of Bunye II and the arrest had to be made promptly, even without warrant, (after the police were alerted) and despite the lapse of fourteen (14) days to prevent possible flight.

As shown in the decision under consideration, this Court, in upholding the arrest without warrant of Nazareno noted several facts and events surrounding his arrest and detention, as follows:

"x x x on 3 January 1989 (or six (6) days after his arrest without warrant), an information charging Narciso Nazareno, Ramil Regala, and two (2) others, with the killing of Romulo Bunye II was filed with the Regional Trial Court of Makati, Metro Manila. The case is docketed therein as Criminal Case No. 731.

On 7 January 1989, Narciso Nazareno filed a motion to post bail, but the motion was denied by the trial court in an order dated 10 January 1989, even as the motion to post bail, earlier filed by his co-accused, Manuel Laureaga, was granted by the same trial court.

On 13 January 1989, a petition for habeas corpus was filed with this Court on behalf of Narciso Nazareno and on 13 January 1989, the Court issued the writ of habeas corpus, returnable to the Presiding Judge of the Regional Trial Court of Biñan, Laguna, Branch 24, ordering said court to hear the case on 30 January 1989 and thereafter resolve the petition.

At the conclusion of the hearing, or on 1 February 1989, the Presiding Judge of the Regional Trial Court of

Biñan, Laguna issued a resolution denying the petition for habeas corpus, it appearing that the said Narciso Nazareno is in the custody of the respondents by reason of an information filed against him with the Regional Trial Court of Makati, Metro Manila which had taken cognizance of said case and had, in fact, denied the motion for bail filed by said Narciso Nazareno (presumably because of the strength of the evidence against him)."

This Court reiterates that shortly after the arrests of Espiritu and Nazareno, the corresponding informations against them were filed in court. The arrests of Espiritu and Nazareno were based on probable cause and supported by factual circumstances. They complied with the conditions set forth in Section 5(b) of Rule 113. They were not arbitrary or whimsical arrests.

Parenthetically, it should be here stated that Nazareno has since been convicted by the court a quo for murder and sentenced to reclusion perpetua. He has appealed the judgment of conviction to the Court of Appeals where it is pending as of this date (CA-G.R. No. still undocketed).

Petitioners contend that the decision of 9 July 1990 ignored the constitutional requisites for the admissibility of an extrajudicial admission.

In the case of Buenaobra (G.R. Nos. 84581-82), he admitted^[30] that he was an NPA courier. On the other hand, in the case of Amelia Roque, she admitted^[31] that the unlicensed firearms, ammunition and subversive documents found in her possession during her arrest, belonged to her.

The Court, it is true, took into account the admissions of the arrested persons of their membership in the CPP/NPA, as well as their ownership of the unlicensed firearms, ammunitions and documents in their possession. But again, these admissions, as revealed by the records, strengthen the Court's perception that truly the grounds upon which the arresting officers based their arrests without warrant, are supported by probable cause, i.e. that the persons arrested were probably guilty of the commission of certain offenses, in compliance with Section 5, Rule 113 of the Rules of Court. To note these admissions, on the other hand, is not to rule that the persons arrested are already guilty of the offenses upon which their warrantless arrests were predicated. The task of determining the guilt or innocence of persons arrested without warrant is not proper in a petition for habeas corpus. It pertains to the trial of the case on the merits.

As to the argument that the doctrines in *Garcia vs. Enrile*, and *Ilagan vs. Enrile* should be abandoned, this Court finds no compelling reason at this time to disturb the same, particularly in the light of prevailing conditions where national security and stability are still directly challenged perhaps with greater vigor from the communist rebels. What is important is that every arrest without warrant be tested as to its legality via habeas corpus proceedings. This Court will promptly look into — and all other appropriate courts are enjoined to do the same — the legality of the arrest without warrant so that if the conditions under Sec. 5 of Rule 113, Rules of Court, as elucidated in this Resolution, are not met, the detainee shall forthwith be ordered released; but if such conditions are met, then the detainee shall not be made to languish in his detention but must be promptly tried to the end that he may be either acquitted or convicted, with the least delay, as warranted by the evidence.

A Final Word

This Resolution ends as it began, reiterating that mere suspicion of being a Communist Party member or a subversive is absolutely not a ground for the arrest without warrant of the suspect. The Court predicated the validity of the questioned arrests without warrant in these petitions, not on mere unsubstantiated suspicion, but on compliance with the conditions set forth in Section 5, Rule 113, Rules of Court, a long existing law and which, for stress, are probable cause and good faith of the arresting peace officers, and, further, on the basis of, as the records show, the actual facts and circumstances supporting the arrests. More than the allure of popularity or palatability

to some groups, what is important is that the Court be right.

ACCORDINGLY, the motions for reconsideration of the decision dated 9 July 1990, are DENIED. This denial is FINAL.

SO ORDERED.

Narvasa, Melencio-Herrera, Paras, Padilla, Bidin, Griño-Aquino, Medialdea, and Davide, Jr., JJ., concur.

Cruz and Regalado, JJ., see separate opinion.

Fernan, C.J., Gutierrez, Jr., and Feliciano, JJ., see separate concurring and dissenting opinion.

Sarmiento, J., see dissenting opinion.

[1] G.R. No. 61388, April 20, 1983, 121 SCRA 472

[2] G.R. No. 70748, October 21, 1985, 139 SCRA 349

[3] Section 1, Rule 102: "To what habeas corpus extends. — Except otherwise expressly provided by law, the writ of habeas corpus shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the persons entitled thereto."

[4] Villavicencio vs. Lukban, 39 Phil. 778

[5] Ilagan v. Enrile, G.R. No. 70748, October 21, 1985, 139 SCRA 349

[6] Sayo vs. Chief of Police, 80 Phil. 859 (1948)

[7] Republic Act No. 1700 known as the "Anti-Subversion Act" entitled "An Act to outlaw the CPP and similar associations, penalizing membership therein and for other purposes." (1957); and the subsequent related decrees such as Presidential Decree No. 885, entitled "Outlawing subversive organizations, penalizing membership therein, and for other purposes." (1976); and Presidential Decree No. 1835 entitled "Codifying the various laws on anti-subversion and increasing the penalties for membership in subversive organizations."

[8] G.R. No. 61388, April 20, 1983, 121 SCRA 472

[9] US vs. Santos, 36 Phil. 851 (1917)

[10] Ibid.

[11] Ibid.

[12] Records of G.R. No. 81567, affidavit dated 4 February 1988

[13] Rollo, pp. 311-312 (G.R. No. 81567)

[14] Presidential Decree No. 169 requires attending physicians and/or persons treating injuries resulting from any form of violence, to report such fact to the Philippine Constabulary and prescribing penalties for any violation thereof.

[15] Decision dated 9 July 1990, pp. 19-20

[16] Decision, pp. 10-11

[17] Ibid., p. 12

[18] Ibid., pp. 12-13

[19] Ibid., pp. 14-15

[20] Decision, p. 18

[21] United States vs. Sanchez, No. 9294, March 30, 1914, 27 Phil. 442

[22] Ibid: "The legality of the detention does not depend upon the fact of the crime, but x x x upon the nature of the deed, wherefrom such characterization may reasonably be inferred by the officer or functionary to whom the law at that moment leaves the decision for the urgent purpose of suspending the liberty of the citizen."

In People vs. Ancheta, it was held that "the legality of detention made by a person in authority or an agent thereof x x x does not depend upon the juridical and much less the judicial fact of crime which, at the time of its commission, is not and cannot definitively be determined for the lack of necessary data and for jurisdiction but upon the nature of the deed x x x."

[23] United States vs. Santos, supra.

[24] Ibid.

[25] Article 124 of the Revised Penal Code provides:

"ART. 124. Arbitrary detention. — Any public officer or employee who, without legal grounds, detains a person, shall suffer:

1. The penalty of arresto mayor in its maximum period to prision correccional in its minimum period, if the detention has not exceeded three days. x x x."

[26] Damages for the impairment of rights and liberties of another person.

[27] Affidavit of Avelino Faustino dated 23 November 1988; Return of the Writ dated 25 November 1988; Decision dated 9 July 1990, pp. 23-24.

[28] Joint Affidavit of 5 police agents, dated 23 November 1988; Decision, supra

[29] Affidavit of police agents, dated 28 December 1988, marked Exhibit "A" at the RTC, Binan, Branch 24

[30] Decision of 9 July 1990, pp. 9 and 12

[31] Decision of 9 July 1990, p. 13

SEPARATE OPINION

CRUZ, J.:

I reiterate my concurrence with the ponencia insofar as it dismissed the petitions of those who were arrested in flagrante, or subsequently posted bail or chose to remain in the custody of the military, or voluntarily permitted the search of the house without warrant. I do not think that under the applicable circumstances the petitioners can validly complain that they are being unlawfully detained.

But I must again express my dissent to the continued observance of *Garcia-Padilla v. Enrile*, 121 SCRA 472, to justify the warrantless arrest and detention of the other petitioners on the ground that they were apprehended for the continuing offenses of rebellion and other allied crimes.

We find in the said decision this particularly disturbing observation, which was quoted with approval in the original ponencia:

The arrest of persons involved in the rebellion, whether as its fighting armed elements, or for committing non-violent acts but in furtherance of the rebellion, is more an act of capturing them in the course of an armed conflict, to quell the rebellion, than for the purpose of immediately prosecuting them in court for a statutory offense. The arrest, therefore, need not follow the usual procedure in the prosecution of offenses which requires the determination by a judge of the existence of probable cause before the issuance of a judicial warrant of arrest and the granting of bail if the offense is bailable. Obviously, the absence of a judicial warrant is no legal impediment to arresting or capturing persons committing overt acts of violence against government forces, or any other milder acts but equally in pursuance of the rebellious movement. (*Italics supplied.*)

The treatment suggested envisions an actual state of war and is justified only when a recognition of belligerency is accorded by the legitimate government to the rebels, resulting in the application of the laws of war in the regulation of their relations. The rebels are then considered alien enemies — to be treated as prisoners of war when captured — and cannot invoke the municipal law of the legitimate government they have disowned. It is in such a situation that the processes of the local courts are not observed and the rebels cannot demand the protection of the Bill of Rights that they are deemed to have renounced by their defiance of the government.

But as long as that recognition has not yet been extended, the legitimate government must treat the rebels as its citizens, subject to its municipal law and entitled to all the rights provided thereunder, including and especially those guaranteed by the Constitution. Principal among these — in our country — are those embodied in the Bill of Rights, particularly those guaranteeing due process, prohibiting unreasonable searches and seizures, allowing bail, and presuming the innocence of the accused. The legitimate government cannot excuse the suppression of these rights by the "exigencies" of an armed conflict that at this time remains an internal matter governed exclusively by the laws of the Republic of the Philippines.

Treatment of the rebels as if they were foreign invaders — or combatants — is not justified in the present situation as our government continues to prosecute them as violators of our own laws. Under the doctrine announced in *Garcia-Padilla*, however, all persons suspected as rebels are by such suspicion alone made subject to summary arrest no different from the unceremonious capture of an enemy soldier in the course of a battle. The decision itself says that the arrest "need not follow the usual procedure in the prosecution of offenses" and "the absence of a judicial warrant is no impediment" as long as the person arrested is suspected by the authorities of the "continuing offense" of subversion or rebellion or other related crimes. International law is thus substituted for municipal law in regulating the relations of the Republic with its own citizens in a purely domestic matter.

As for the duration of the offenses, the decision contained the following pronouncement which this Court has also adopted as its own:

x x x The crimes of insurrection or rebellion, subversion, conspiracy or proposal to commit such crimes, and other crimes and offenses committed in the furtherance on the occasion thereof, or incident thereto, or in connection therewith under Presidential Proclamation No. 2045, are all in the nature of continuing offenses which set them apart from the common offenses, aside from their essentially involving a massive conspiracy of nationwide magnitude. (*Italics supplied.*)

The beginning of the "continuing offense" may be arbitrarily fixed by the authorities usually by simply placing the suspect "under surveillance," to lay the basis for his eventual apprehension. Once so placed, he may at any time be arrested without warrant on the specious pretext that he is in the process of committing the "continuing offense," no matter that what he may be actually doing at the time is a perfectly innocent act.

In the case of *Dural*, the arrest was made while he was engaged in the passive and innocuous act of undergoing medical treatment. The fiction was indulged that he was even then, as he lay supine in his sickbed, engaged in the continuing offense of rebellion against the State. In further justification, the Court says that the arresting officers

acted on "confidential information" that he was in the hospital, which information "was found to be true." This is supposed to have validated the determination of the officers that there was "probable cause" that excused the absence of a warrant.

My own impression is that probable cause must be established precisely to justify the issuance of a warrant, not to dispense with it; moreover, probable cause must be determined by the judge issuing the warrant, not the arresting officer who says it is not necessary.

In the case of Espiritu, the arrest was made while he was actually sleeping, and for allegedly seditious remarks made by him the day before. The Court says his case is not covered by the Garcia-Padilla doctrine but approves the arrest just the same because the remarks were supposed to continue their effects even to the following day. The offense was considered as having been just committed (to make it come under Rule 113, Section 5, of the Rules of Court) despite the considerable time lapse.

It was worse in the case of Nazareno, who was also arrested without warrant, and no less than fourteen days after the killing. In sustaining this act, the Court says that it was only on the day of his arrest that he was identified as one of the probable killers, thus suggesting that the validity of a warrantless arrest is reckoned not from the time of the commission of an offense but from the time of the identification of the suspect.

Section 5 of Rule 113 says that a peace officer may arrest a person without a warrant if the latter "has committed, is actually committing, or is attempting to commit an offense" or when an offense "has in fact just been committed." The requirement of immediacy is obvious from the word "just," which, according to Webster, means "a very short time ago." The arrest must be made almost immediately or soon after these acts, not at any time after the suspicion of the arresting officer begins, no matter how long ago the offense was committed.

I am also uneasy over the following observations in the present resolution which I hope will not be the start of another dangerous doctrine:

The Court, it is true, took into account the admissions of the arrested persons of their membership in the CPP/NPA, as well as their ownership of the unlicensed firearms, ammunitions and documents in their possession. But again, these admissions, as revealed by the records, strengthen the Court's perception that truly the grounds upon which the arresting officers based their arrests without warrant, are supported by probable cause, i.e., that the persons arrested were probably guilty of the commission of certain offenses, in compliance with Section 5, Rule 113 of the Rules of Court.

I can only repeat my own misgivings when I dissented in the recent case of *People v. Malmstedt*, G.R. No. 91107, June 19, 1991, where I noted: "The conclusion that there was probable cause may have been influenced by the subsequent discovery that the accused was carrying a prohibited drug. This is supposed to justify the soldier's suspicion. In other words, it was the fact of illegal possession that retroactively established the probable cause that validated the illegal search and seizure. It was the fruit of the poisonous tree that washed clean the tree itself."

I submit that the affirmation by this Court of the Garcia-Padilla decision to justify the illegal arrests made in the cases before us is a step back to that shameful past when individual rights were wantonly and systematically violated by the Marcos dictatorship. It seems some of us have short memories of that repressive regime, but I for one am not one to forget so soon. As the ultimate defender of the Constitution, this Court should not gloss over the abuses of those who, out of mistaken zeal, would violate individual liberty in the dubious name of national security. Whatever their ideology and even if it be hostile to ours, the petitioners are entitled to the protection of the Bill of Rights, no more and no less than any other person in this country. That is what democracy is all about.

SEPARATE OPINION

REGALADO, J.:

While I have heretofore concurred in the ponencia in the above-entitled cases and I reiterate such concurrence, I wish to unburden myself of some reservations on the rationale adopted in G.R. No. 86332.

It is posited in this resolution that "(a)lthough the killing of Bunye II occurred on 14 December 1988, while Nazareno's arrest without warrant was made only on 28 December 1988, or 14 days later, the arrest falls under Section 5(b) of Rule 113, since it was only on 28 December 1988 that the police authorities came to know that Nazareno was probably one of those guilty in the killing of Bunye II."

I am afraid that there has been a misapplication of Section 5(b) of Rule 113 which, while authorizing a peace officer or a private person to effect a warrantless arrest, specifically conditions that grant of authority upon the situation "(w)hen 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."

It is significant that when the corresponding provisions of the 1964 Rules of Court were amended in the 1985 Rules of Criminal Procedure, the particular revision of paragraph (b) of the aforesaid section consisted in imposing the requirements that the person making the arrest has personal knowledge of the facts indicating that the arrestee is responsible for an offense which has just been committed.

Now, according to the resolution, "the records show that in the morning of 14 December 1988, Romulo Bunye II was killed by a group of men in Alabang, Muntinlupa, Metro Manila; that at about 5:00 o'clock in the morning of 28 December 1988, Ramil Regala, one of the suspects in the said killing, was arrested and he pointed to Narciso Nazareno as one of his companions during the killing of Bunye II; that at 7:20 of the same morning (28 December 1988), the police agents arrested Nazareno, without warrant, for investigation."

Since, clearly, the arresting police agents merely acted upon the information imparted by one of the suspects, Ramil Regala, the resolution has emasculated the requirement in Section 5(b) that the person making the arrest must have had personal knowledge of factual indications regarding the complicity or liability of the arrestee for the crime. Yet, that amendment requiring such personal knowledge must have been designed to obviate the practice in the past of warrantless arrests being effected on the basis of or supposed reliance upon information obtained from third persons who merely professed such knowledge or, worse, concocted such reports for variant reasons not necessarily founded on truth.

Further, and obviously as an added deterrent to the possibility that such arrest without a warrant may result from imputations based on dubious motives, it is now required that the crime must have just been committed. The recency contemplated here, in relation to the making of the warrantless arrest, is the time when the crime was in fact committed, and not the time when the person making the arrest learned or was informed of such commission. Otherwise, at the risk of resorting to *reductio ad absurdum*, such warrantless arrests could be validly made even for a crime committed, say, more than a year ago but of which the arresting officer received information only today.

The brevity in the interval of time between the commission of the crime and the arrest, as now required by Section 5(b), must have been dictated by the consideration, among others, that by reason of such recency of the criminal occurrence, the probability of the arresting officer acquiring personal and/or reliable knowledge of such fact and the identity of the offender is necessarily enhanced, if not assured. The longer the interval, the more attenuated are the chances of his obtaining such verifiable knowledge. In the case under consideration, the obtention of information of a crime committed fourteen (14) days earlier necessarily undermines the capacity of the arresting

officer to ascertain the reliability of the information he is acting upon and to acquire personal knowledge thereof after such verification.

It may be granted, as an ad hoc proposition, that the arrest of Nazareno was based on probable cause and that it was not whimsical, at least, in this instance. It is correct to say that prevailing conditions affecting national security and stability must also be taken into account. However, for the reasons above elucidated, I take exception to the conclusion that the conditions in Section 5(b) of Rule 113 had been complied with in this case. It is true that the corresponding information was filed against Nazareno shortly after his arrest but that, precisely, is another cause controversy. Definitely, if the rules on arrest are scrupulously observed, there would be no need for the usual invocation of Ilagan as a curative balm for unwarranted incursions into civil liberties.

CONCURRING AND DISSENTING OPINION FERNAN, C.J.:

After a deep and thorough reexamination of the decision of July 9, 1990 and an exhaustive evaluation of the motions for reconsideration of the said decision, I am inclined to agree with the majority's resolution on said motions for reconsideration except for the legality of the warrantless arrests of petitioner Deogracias Espiritu for the crime of inciting to sedition and petitioner Alfredo Nazareno for the crime of murder.

In the words of the resolution, Espiritu "was arrested without warrant, not for subversion or any 'continuing offense,' but for uttering" the following: "Bukas tuloy ang welga natin x x x hanggang sa magkagulo na." Apparently, such statement was, in the perception of the arresting officers, inciting to sedition. While not conceding the validity of such perception, realizing that it is indeed possible that Espiritu was merely exercising his right to free speech, the resolution nonetheless supports the authority of peace officers "only for purposes of the arrest."

I find this position to be adverse to the very essence of the resolution which sanctions warrantless arrests provided they are made in accordance with law. In the first place, Espiritu may not be considered as having "just committed" the crime charged. He allegedly first uttered seditious remarks at the National Press Club in the afternoon of November 22, 1988. The second allegedly seditious remark aforequoted was made at around 5:00 o'clock in the same afternoon (Decision, pp. 23-24). Under these circumstances, the law enforcement agents had time, short though it might seem, to secure a warrant for his arrest. Espiritu's apprehension may not therefore be considered as covered by Section 5(b) of Rule 113 which allows warrantless arrests "when an offense has in fact just been committed."

The same observation applies with greater force in the case of Nazareno who was arrested 14 days after the commission of the crime imputed to him.

Secondly, warrantless arrests may not be allowed if the arresting officers are not sure what particular provision of law had been violated by the person arrested. True it is that law enforcement agents and even prosecutors are not all adept at the law. However, erroneous perception, not to mention ineptitude among their ranks, especially if it would result in the violation of any right of a person, may not be tolerated. That the arrested person has the "right to insist during the pre-trial or trial on the merits" (Resolution, p. 18) that he was exercising a right which the arresting officer considered as contrary to law, is beside the point. No person should be subjected to the ordeal of a trial just because the law enforcers wrongly perceived his action.

Thirdly, inciting to sedition is not a continuous crime for which the offender may be arrested without a warrant duly issued by the proper authority. By its nature, a single act of urging others to commit any of the acts enumerated in Article 142 of the Revised penal Code may suffice to hold anyone liable for inciting to sedition.

While the crime is aimed at anarchy and radicalism and presents largely a question of policy (*Espuelas vs. People*, 90 Phil. 524 [1951]), it should be remembered that any of the prohibited acts in Article 142 may infringe upon the fundamental freedoms of speech and expression. There arises, therefore, the necessity of balancing interests: those of the State as against those of its individual citizen. Here lies the urgency of judicial intervention before an arrest is made. Added to this is the subjectivity of the determination of what may incite other people to sedition. Hence, while the police should act swiftly when a seditious statement has been uttered in view of the jeopardy it may cause the government, speedy action should consist not in warrantless arrests but in securing warrants for such arrests.

On the legality of warrantless arrests of violators of the Anti-Subversion Law, it should be underscored that anyone who undertakes such arrest must see to it that the alleged violator is a knowing member of a subversive organization as distinguished from a nominal one (*People vs. Ferrer*, L-32613-14, December 27, 1972, 48 SCRA 382). Thus, a subversive may be arrested even if he has not committed overt acts of overthrowing the government such as the bombing of government offices or the assassination of government officials provided there is probable cause to believe that he is in the roll of members of a subversive organization. It devolves upon the accused to prove membership by force or coercion. Certainly, one may not be in such a roll without undergoing the conscious act of enlistment.

It bears repeating that warrantless arrests are governed by law and subject to stringent application. Section 5, Rule 113 of the Rules on Criminal Procedure now requires that an offense "has in fact just been committed." According to the late Chief Justice Teehankee, this "connotes immediacy in point of time and excludes cases under the old rule where an offense 'has in fact been committed' no matter how long ago. Similarly, the arrestor must have 'personal knowledge of the facts indicating that the [arrestee] has committed it' (instead of just 'reasonable ground to believe that the [arrestee] has committed it' under the old rule)." (Dissenting opinion in *Ilagan vs. Enrile*, G.R. No. 70748, October 21, 1985, 139 SCRA 349, 408).

I deem it apt herein to recall other Court rulings providing guidelines in effecting arrests without warrants. In *People vs. Burgos* (G.R. No. 68955, September 4, 1986, 144 SCRA 1), the Court considered as illegal the warrantless arrest of a subversive not based on the arresting officer's personal knowledge of such subversion and held that any rule on arrests without warrants must be strictly construed. We categorically stated therein that warrantless arrests should "clearly fall within the situations when securing a warrant would be absurd or is manifestly unnecessary as provided by the Rules" (144 SCRA at 14). Moreover, "it is not enough that there is reasonable ground to believe that the person to be arrested has committed a crime. A crime must in fact or actually (has just) been committed first. That a crime has actually been committed is an essential precondition. It is not enough to suspect that a crime may have been committed. The fact of the commission of the offense must be undisputed. The test of reasonable ground applies only to the identity of the perpetrator." (*Supra*, at p. 15).

Earlier, in *Morales, Jr. vs. Enrile* (G.R. No. 61016, April 26, 1983, 121 SCRA 538), the Court laid out the procedure to be observed the moment a person is arrested:

"At the time a person is arrested, it shall be the duty of the arresting officer to inform him of the reason for the arrest and he must be shown the warrant of arrest, if any. He shall be informed of his constitutional rights to remain silent and to counsel, and that any statement he might make could be used against him. The person arrested shall have the right to communicate with his lawyer, a relative, or anyone he chooses by the most expedient means — by telephone if possible — or by letter or messenger. It shall be the responsibility of the arresting officer to see to it that this is accomplished. No custodial investigation shall be conducted unless it be in the presence of counsel engaged by the person arrested, by any person on his behalf, or appointed by the court upon petition on his behalf, or appointed by the court upon the petition either of the detainee himself or by anyone on his behalf. The right to counsel may be waived but the waiver shall not be valid unless made

with the assistance of counsel. Any statement obtained in violation of the procedure herein laid down, whether exculpatory or inculpatory, in whole or in part shall be inadmissible in evidence." (121 SCRA at 554).

These judicial pronouncements must be observed by everyone concerned: the military and civilian components of the government tasked with law enforcement as well as the ordinary citizen who faces a situation wherein civic duty demands his intervention to preserve peace in the community.

I am not unmindful of the fact that abuses occur in arrests especially of offenders of crimes with a political or ideological element. Such abuses are more often than not, triggered by the difficulty in finding evidence that could stand judicial scrutiny — to pinpoint a subversive, police officers usually have to make long and persistent surveillance. However, for the orderly administration of government and the maintenance of peace and order in the country, good faith should be reposed on the officials implementing the law. After all, we are not wanting in laws to hold any offending peace officer liable both administratively and criminally for abuses in the performance of their duties. Victims of abuses should resort to legal remedies to redress their grievances.

If existing laws are inadequate, the policy-determining branches of the government may be exhorted peacefully by the citizenry to effect positive changes. This Court, mandated by the Constitution to uphold the law, can only go as far as interpret-ing existing laws and the spirit behind them. Otherwise, we shall be entering the dangerous ground of judicial legislation.

CONCURRING AND DISSENTING OPINION

GUTIERREZ, JR., J.:

The philosophy adopted in our Constitution is that liberty is an essential condition for order. It is disturbing whenever the Court leans in the direction of order instead of liberty in hard cases coming before us.

People all over the world are fast accepting the theory that only as a society encourages freedom and permits dissent can it have lasting security and real progress, the theory that enhancing order through constraints on freedom is deceptive because restrictions on liberty corrode the very values Government pretends to promote. I believe we should move with the peoples of the world who are fast liberating themselves.

I, therefore, vote for the strict application of Section 5 (a) and (b) of Rule 113 on arrests without warrant, to wit:

"SECTION 5. Arrest without warrant; when lawful. - A peace officer or a private person may, without a warrant, arrest a person:

- a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
- b) When an offense has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it.

xxx xxx xxx

Only in the cases found in the Rule should we allow arrests without warrants. In case of doubt, the tendency should be to declare the warrantless arrest illegal.

Insofar as G.R. Nos. 84581-82, G.R. Nos. 84583-84 and G.R. No. 83162 involving Amelia Roque, Wilfredo Buenaobra, Domingo Anonuevo, Ramon Casiple, and Vicky Ocaya are concerned, the petitioners were arrested after having been apprehended while in possession of illegal firearms and ammunitions. They were actually committing a crime when arrested. I concur in the denial of their motions for reconsideration.

I vote to grant the motion for reconsideration in G.R. No. 85727 where Deogracias Espiritu was arrested while urging jeepney and bus drivers to join a strike of transport workers on the ground that he was inciting to sedition.

This impresses me as Court validation of a clear infringement of an individual's freedom of speech. "Inciting to sedition" is a term over which the most learned writers and jurists will differ when applied to actual cases. I doubt if there are more than a handful of policemen in the whole country who would know the full dimensions of the fine distinctions which separate the nation's interest in the liberty to fully and freely discuss matters of national importance on one hand and the application of the clear and present danger rule as the test when claims of national security and public safety are asserted, on the other. In fact, the percentage of knowledgeability would go down further if we consider that "inciting to sedition" requires the ability to define, among others, (1) what kinds of speeches or writings fall under the term "inciting"; (2) the meaning of rising publicly and tumultuously; (3) when does a certain effort amount to force, intimidation, or illegal method; (4) what constitute the five objects or ends of sedition; and (5) what is a scurrilous libel against the Philippines. If we allow public speakers to be picked up simply because what they say is irritating or obnoxious to the ears of a peace officer or critical of government policy and action, we will undermine all pronouncements of this Court on the need to protect that matrix of all freedoms, which is freedom of expression. At the very least, a warrant of arrest after a preliminary examination by a Judge is essential in this type of offense.

Insofar as G.R. No. 81567 is concerned, I join the other dissenting Justices in their observations regarding "continuing offenses." To base warrantless arrests on the doctrine of continuing offense is to give a license for the illegal detention of persons on pure suspicion. Rebellion, insurrection, or sedition are political offenses where the line between overt acts and simple advocacy or adherence to a belief is extremely thin. If a court has convicted an accused of rebellion and he is found roaming around, he may be arrested. But until a person is proved guilty, I fail to see how anybody can jump to a personal conclusion that the suspect is indeed a rebel and must be picked up on sight whenever seen. The grant of authority in the majority opinion is too broad. If warrantless searches are to be validated, it should be Congress and not this Court which should draw strict and narrow standards. Otherwise, the non-rebels who are critical, noisy, or obnoxious will be indiscriminately lumped up with those actually taking up arms against the Government.

The belief of law enforcement authorities, no matter how well grounded on past events, that the petitioner would probably shoot other policemen whom he may meet does not validate warrantless arrests. I cannot understand why the authorities preferred to bide their time, await the petitioner's surfacing from underground, and pounce on him with no legal authority instead of securing warrants of arrest for his apprehension. The subsequent conviction of a person arrested illegally does not validate the warrantless arrest.

In G.R. No. 86332, Romulo Bunye was killed on December 14, 1988. The information that Narciso Nazareno was one of the killers came to the attention of peace officers only on December 28, 1988 or fourteen (14) days later. To say that the offense "has in fact just been committed" even if 14 days have lapsed is to stretch Rule 113 on warrantless arrests into ridiculous limits. A warrant of arrest is essential in this case. I vote to grant the motion for reconsideration.

The subsequent conviction of a person arrested illegally does not reach back into the past and render legal what was illegal. The violation of the constitutional right against illegal seizures is not cured by the fact that the arrested person is indeed guilty of the offense for which he was seized. A government of laws must abide by its own Constitution.

CONSIDERING THE FOREGOING, I VOTE TO:

- (1) DENY the motions for reconsideration in G.R. Nos. 84581-82; G.R. No. 84583-84; and G.R. No. 83162;
- (2) GRANT the motion for reconsideration in G.R. No. 85727;
- (3) GRANT the motion for reconsideration in G.R. No. 86332; and
- (4) GRANT the motion for reconsideration in G.R. No. 81567.

CONCURRING AND DISSENTING OPINION**FELICIANO, J.:**

I concur in the result reached by the majority in the Resolution disposing of the Motion for Reconsideration.

At the same time, however, I feel compelled to dissent from certain statements made by the majority principally concerning the applicability of the "continuing crimes" doctrine to the problem of arrests without warrants. It seems clear that these statements are really obiter dicta, since they are quite unnecessary for sustaining the actual results reached in the majority Resolution. This was summarily pointed out in my very brief statement concurring in the result reached in the original Decision of the Court dated 9 July 1990. The subsequent developments in several of the cases here consolidated, which are carefully detailed in the majority Resolution, make this even clearer. Nonetheless, the majority Resolution has taken the time and trouble expressly to reiterate the "continuing crimes" doctrine as applicable in respect of warrantless arrests. Although the above statements are obiter, they have been made and, I believe, need to be addressed to some extent and the inter-relation of the "continuing crimes" doctrine with constitutional rights explored.

1. We start at the beginning, that is, the constitutional guarantee against unreasonable seizures of persons. Article III Section 2 of the Constitution reads:

"Section 2. 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." (Italics supplied)

Under the above provision, arrests, i.e., the constraint and seizure of the persons of individual members of society, must, as a general rule, be preceded by the securing of a warrant of arrest, the rendition of which complies with the constitutional procedure specified in Article III Section 2. Arrests made without a warrant issued by a judge after complying with the constitutional procedure, are prima facie unreasonable seizures of persons within the meaning of Article III Section 2.

2. There are, however, certain well-recognized exceptions to the norm that warrantless arrests are unreasonable seizures of persons. Those exceptions are, in our day, essentially found in Section 5(a) and (b) of Rule 113 of the Rules of Court. Section 5(a) and (b) mark out the situations where an officer of the law, or a private person for that matter, may lawfully arrest a person without previously securing a warrant of arrest. The full text of Section 5, Rule 113 follows:

"Section 5. Arrest without warrant; when lawful. — A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it; and

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

In cases falling under paragraphs (a) and (b) hereof, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail, and he shall be proceeded against in accordance with Rule 112, Section 7."

3. Before examining the scope and implications of Section 5(a) and (b), it is important to recall that judicial interpretation and application of Section 5(a) and (b) must take those provision for what they are: they are exceptions to a vital constitutional norm enshrined in the Bill of Rights. Exceptions to such a norm must be strictly construed so as not to render futile and meaningless the constitutional rule requiring warrants of arrests before the persons of individuals may be lawfully constrained and seized. The ordinary rule generally applicable to statutory provisions is that exceptions to such provisions must not be stretched beyond what the language in which they are cast fairly warrants, and all doubts should be resolved in favor of the general provision, rather than the exception.[1] This rule must apply with special exigency and cogency where we deal, not with an ordinary statutory provision, but with a constitutional guarantee.[2] Exceptions to such a guarantee must be read with especial care and sensitivity and kept within the limits of their language so to keep vital and significant the general constitutional norm against warrantless arrests. In *Alvarez v. Court of First Instance*,[3] this Court, stressing that:

"II. As the protection of the citizen and the maintenance of his constitutional rights is one of the highest duties and privileges of the court, these constitutional guaranties should be given a liberal construction or a strict construction in favor of the individual, to prevent stealthy encroachment upon, or gradual depreciation of, the rights secured by them (*State v. Custer County*, 198 Pac., 362; *State v. McDaniel*, 231 Pac., 965; 237 Pac., 373). Since the proceeding is a drastic one, it is the general rule that statutes authorizing searches and seizures or search warrants must be strictly construed (*Rose v. St. Clair*, 28 Fed. [2d], 189; *Leonard v. U.S.*, 6 Fed. [2d], 353; *Perry v. U.S.*, 14 Fed. [2d], 88; *Cofer v. State*, 118 So., 613," (Italics supplied)

held that:

"x x x All illegal searches and seizures are unreasonable while lawful ones are reasonable.[4]

In *People v. Burgos*,[5] this Court reiterated the above rule in the following terms:

"There is no such personal knowledge in this case. Whatever knowledge was possessed by the arresting officers, it came in its entirety from the information furnished by Cesar Masamlok. The location of the firearm was given by the appellant's wife.

At the time of the appellant's arrest, he was not in actual possession of any firearm or subversive document. Neither was he committing any act which could be described as subversive. He was, in fact, plowing his field at the time of the arrest.

The right of a person to be secure against any unreasonable seizure of his body and any deprivation of his liberty is a most basic and fundamental one. The statute or rule which allows exceptions to the requirement of warrants of arrest is strictly construed. Any exception must clearly fall within the situations when securing a warrant would be absurd or is manifestly unnecessary as provided by the Rule. We cannot liberally construe the rule on arrests without warrant or extend its application beyond the cases specifically provided by law. To do so would infringe upon personal liberty and set back a basic right so often violated and so deserving of full

protection."[6] (*italics supplied*)

4. Section 5(a) relates to situations where a crime is committed or attempted to be committed in the presence of the arresting officer. The fact of the occurrence of the offense, or of the attempt to commit an offense, in the presence of the arresting officer, may be seen to be the substitute, under the circumstances, for the securing of a warrant of arrest. In such a situation, there is an obvious need for immediate, even instantaneous, action on the part of the arresting officer to suppress the breach of public order and to prevent further breaches then and there. Section 5(a) may, moreover, be seen to refer to overt acts constitutive of a crime taking place in the presence of the arresting officer. The term "presence" in this connection is properly and restrictively construed to relate to acts taking place within the optical or perhaps auditory perception of the arresting officer.[7] If no overt, recognizably criminal, acts occur which are perceptible through the senses of the arresting officer, such officer could not, of course, become aware at all that a crime is being committed or attempted to be committed in his presence.[8] It is elementary that purely mental or psychological phenomena, not externalized in overt physical acts of a human person, cannot constitute a crime in our legal system. For a crime to exist in our legal law, it is not enough that *mens rea* be shown; there must also be an *actus reus*. If no such overt acts are actually taking place in the presence or within the sensory perception of the arresting officer, there would, in principle, be ample time to go to a magistrate and ask for a warrant of arrest. There would, in other words, not be that imperious necessity for instant action to prevent an attempted crime, to repress the crime being committed, or to capture the doer of the perceived criminal act, the necessity which serves as the justification in law of warrantless arrests under Section 5(a).

5. Turning to Section 5 (b), two (2) elements must be coincide before a warrantless arrest may be sustained under this subsection: 1) the offense must have "just been committed" when the arresting officer arrived in the scene; and 2) the officer must have "personal knowledge" of facts indicating that the person to be arrested has committed the offense. In somewhat different terms, the first requirement imports that the effects or corpus of the offense which has just been committed are still visible: e.g. a person sprawled on the ground, dead of a gunshot wound; or a person staggering around bleeding profusely from stab wounds. The arresting officer may not have seen the actual shooting or stabbing of the victim, and therefore the offense can not be said to have been committed "in [his] presence." The requirement of "personal knowledge" on the part of the arresting officer is a requirement that such knowledge must have been obtained directly from sense perception by the arresting officer. That requirement would exclude information conveyed by another person, no matter what his reputation for truth and reliability might be.[9] Thus, where the arresting officer comes upon a person dead on the street and sees a person running away with a knife from where the victim is sprawled on the ground, he has personal knowledge of facts which rendered it highly probable that the person fleeing was the doer of the criminal deed. The arresting officer must, in other words, perceive through his own senses some act which directly connects the person to be arrested with the visible effects or corpus of a crime which has "just been committed."

6. The use of the words "has in fact just been committed" underscores the requirement that the time interval between the actual commission of the crime and the arrival of the arresting officer must be brief indeed. In the first place, the word "just" was fairly recently inserted in Section 5(b) by the 1985 Rules on Criminal Procedures, no doubt in order to underscore the point here being made. In the second place, a latitudinarian view of the phrase "has in fact just been committed" would obviously render pointless the requirement in Section 5(a) that the crime must have been committed "[in] the presence" of the arresting officer. In G.R. No. 86332, the warrantless arrest of Alfredo Nazareno 14-days after the occurrence of the killing with which he was charged along with other persons, cannot by any standard be justified under Section 5(b). In G.R. No. 81567, Dural was arrested without warrant while being treated in a hospital the day after the shooting of the policemen in which he was suspected to have been a participant. While 1-day may be substantially different from 14-days, still it must be pointed out that at the time Dural was arrested in the hospital, the killing of the two (2) policemen in Caloocan City far away from the

St. Agnes Hospital in Quezon City could not reasonably be said to have been just committed. There was no showing, nor did the Court require it, that the arresting officers had been in "hot pursuit" of Dural beginning at the scene of the killing and ending the next day in the hospital.

7. It is worth noting that the requisite of "personal knowledge" on the part of the arresting officer who is determining "probable cause" right at the scene of the crime, is in a sense more exacting than the standard imposed by the Constitution upon the judge who, in the seclusion of his chambers, ascertains "probable cause" by examining the evidence submitted before him. The arresting officer must himself have "personal knowledge"; the magistrate may rely upon the personal knowledge of the witnesses examined by or for him in issuing a warrant of arrest. In the present Resolution, the majority begins with noting the requirement of "personal knowledge" in Section 5(b), but winds up in the next page with a very diluted standard of "reasonable belief" and "good faith" on the part of the arresting officers. The stricter standard is properly applicable to the officers seizing a person without a warrant of arrest, for they are acting in derogation of a constitutional right. That the person unlawfully arrested without a warrant may later turn out to be guilty of the offense he was suspected of in the first place is, of course, quite beside the point. Even a person secretly guilty of some earlier crime is constitutionally entitled to be secure from warrantless arrest, unless he has in fact committed physically observable criminal acts in the presence of the arresting officer, or had just committed such acts when the arresting officer burst upon the scene.

8. Examination of the utilization in the majority Resolution of the doctrine of "continuing crimes," shows that that doctrine is here being used as a substitute for the requirement under Section 5(a) that the crime must have been committed in the presence of the arresting officer, and to loosen up the strict standard established in Section 5(b) that the offense "has in fact just been committed" at the time the arresting officers arrived. But relaxing the standards established in Section 5(a) and (b) for lawful warrantless arrests necessarily means the eroding of the protection afforded by the constitutional provision against unreasonable seizures of persons. Moreover, the majority may be seen to be using the "continuing crime" doctrine to justify a warrantless arrest, not because an offense has been committed in the presence of the arresting officer or because an offense has in fact just been committed when the arresting officer arrived, but rather because the person to be arrested is suspected of having committed a crime in the past and will, it is conclusively presumed, commit a similar crime in the future. The pertinent portion of the majority Resolution reads:

"x x x Dural did not cease to be, or became less of a subversive, FOR PURPOSES OF ARREST, simply because he was, at the time of arrest, confined in the St. Agnes Hospital. x x x That Dural had shot the two (2) policemen in Caloocan City as part of his mission as a 'sparrow' (NPA member) did not end there and then. Dural, given another opportunity, would have shot or would shoot other policemen anywhere as agents or representatives of organized government. It is in this sense that subversion like rebellion (or insurrection) is perceived here as a continuing offense. Unlike other so-called 'common' offenses, i.e., adultery, murder, arson, etc., which generally end upon their commission, subversion and rebellion are anchored on an ideological base which compels the repetition of the same acts of lawlessness and violence until the overriding objective of overthrowing organized government is attained. (Italics supplied)

9. I respectfully submit that an examination of the "continuing crimes" doctrine as actually found in our case law offers no reasonable basis for such use of the doctrine. More specifically, that doctrine, in my submission, does not dispense with the requirement that overt acts recognizably criminal in character must take place in the presence of the arresting officer, or must have just been committed when the arresting officer arrived, if the warrantless arrest is to be lawful. The "continuing crimes" doctrine in our case law (before rendition of *Garcia-Padilla v. Enrile*[10]) does not sustain warrantless arrests of person who, at the time of the actual arrests, were performing ordinary acts of day-to-day life, upon the ground that the person to be arrested is, as it were, merely resting in between specific lawless and violent acts which, the majority conclusively presumes, he will

commit the moment he gets an opportunity to do so.

Our case law shows that the "continuing crimes" doctrine has been used basically in relation to two (2) problems: the first problem is that of determination of whether or not a particular offense was committed within the territorial jurisdiction of the trial court; the second problem is that of determining whether a single crime or multiple crimes were committed where the defense of double jeopardy is raised.

10. In respect of the first problem, the gist of our case law is that where some of the ingredients or elements of an offense take place within the territorial jurisdiction of one court and some other ingredients or elements of the same offense occur in the territory of another court, (e.g., estafa or malversation) either one of the two courts has jurisdiction to try the offense. Where all of the essential elements of a crime take place within the territory of one court but "by reason of the very nature of the offense committed" the violation of the law is deemed to be "continuing", then the court within whose territorial jurisdiction the offense continues to be committed, has jurisdiction to try a person charged with such offense. In the latter case, the offense is deemed to be continuing because some or all of the elements constituting the offense occurred within jurisdiction of the second court (e.g., kidnapping and illegal detention; libel; evasion of service of sentence). The criminal acts are regarded as repeated or as continuing within the province or city where the defendant was found and arrested.[11] Clearly, overt acts of the accused constituting elements of the crime charged must be shown to have been committed within territorial jurisdiction of the court where he is charged.

11. Turning to the second type of problem, the question is normally presented in terms of whether one crime or multiple crimes were committed by the accused. Where the series of acts actually alleged and proven to have been committed by the accused constituted only one and the same crime, the defense of double jeopardy becomes available where a second information is filed covering acts later in the series. Upon the other hand, where the acts of the accused constituted discrete, multiple offenses, each act comprising a distinct and separate offense, the double jeopardy defense is non-available.[12] The point worth stressing is that in passing upon the issue relating to the unity or multiplicity of offenses committed, the overt acts of the accused constitutive either of the single offense or of the plural offenses, must be shown.

12. My final submission, is that, the doctrine of "continuing crimes", which has its own legitimate function to serve in our criminal law jurisprudence, cannot be invoked for weakening and dissolving the constitutional guarantee against warrantless arrests. Where no overt acts comprising all or some of the elements of the offense charged are shown to have been committed by the person arrested without warrant, the "continuing crime" doctrine should not be used to dress up the pretense that a crime, begun or committed elsewhere, continued to be committed by the person arrested in the presence of the arresting officer. The capacity for mischief of such a utilization of the "continuing crimes" doctrine, is infinitely increased where the crime charged does not consists of unambiguous criminal acts with a definite beginning and end in time and space (such as the killing or wounding of a person or kidnapping and illegal detention or arson) but rather of such problematic offenses as membership in or affiliation with or becoming a member of, a subversive association or organization. For in such cases, the overt constitutive acts may be morally neutral in themselves, and the unlawfulness of the acts a function of the aims or objectives of the organization involved. Note, for instance, the following acts which constitute prima facie evidence of "membership in any subversive association:"[13]

- a) Allowing himself to be listed as a member in any book or any of the lists, records, correspondence, or any other document of the organization;
- b) Subjecting himself to the discipline of such association or organization in any form whatsoever;
- c) Giving financial contribution to such association or organization in dues, assessments, loans or in any other

forms;

x x x x x x x x

f) Conferring with officers or other members of such association or organization in furtherance of any plan or enterprise thereof;

x x x x x x x x

h) Preparing documents, pamphlets, leaflets, books, or any other type of publication to promote the objectives and purposes of such association or organization;

x x x x x x x x

k) Participating in any way in the activities, planning action, objectives, or purposes of such association or organization.

It may well be, as the majority implies, that the constitutional rule against warrantless arrests and seizures makes the law enforcement work of police agencies more difficult to carry out. It is not our Court's function, however, and the Bill of Rights was not designed, to make life easy for police forces but rather to protect the liberties of private individuals. Our police forces must simply learn to live with the requirements of the Bill of Rights, to enforce the law by modalities which themselves comply with the fundamental law. Otherwise they are very likely to destroy, whether through sheer ineptness or excess of zeal, the very freedoms which make our polity worth protecting and saving.

[1] Salaysay v. Castro, 98 Phil. 364 (1956).

[2] Realty Investments Inc. v. Pastrana, 84 Phil. 842 (1949); Sayo v. Chief of Police of Manila, 80 Phil. 859 (1948).

[3] 64 Phil. 33 (1937).

[4] 64 Phil. at 44.

[5] 144 SCRA 1 (1986).

[6] 144 SCRA at 14.

[7] See e.g., U.S. v. Samonte 16 Phil. 516 (1910).

[8] In *People v. Aminnudin* 163 SCRA 402 (1988), the Court, in nullifying a warrantless arrest, said, through Mr. Justice Cruz:

"In the many cases where this Court has sustained the warrantless arrest of violators on the Dangerous Drugs Act, it has always been shown that they were caught red-handed, as a result of what are popularly called "buy-bust" operations of the narcotics agents. Rule 113 was clearly applicable because at the precise time of arrest the accused was in the act of selling the prohibited drug.

In the case at bar, the accused-appellant was not, at the moment of his arrest, committing a crime nor was it shown that he was about to do so or that he had just done so. What he was doing was descending the gangplank of the M/V Wilcon 9 and there was no outward indication that called for his arrest. To all appearances, he was like any of the other passengers innocently disembarking from the vessel. It was only when the informer pointed to him as the carrier of the marijuana that he suddenly became suspect and so subject to apprehension. It was the furtive

finger that triggered his arrest. The identification by the informer was the probable cause as determined by the officers (and not a judge) that authorized them to pounce upon Aminnudin and immediately arrest him." (163 SCRA at 409-410) (*Italics supplied*)

[9] *People v. Burgos*, 144 SCRA 1 (1986).

[10] 121 SCRA 472 (1983).

[11] *Parulan v. Director of Prisons*, 22 SCRA 638 (1968); *U.S. v. Cunanan*, 26 Phil. 376 (1913); *U.S. v. Santiago*, 27 Phil. 408 (1914); *U.S. v. Laureaga*, 2 Phil. 71 (1903).

[12] E.g. *People v. Zapata and Bondoc*, 88 Phil. 688 (1951) where the Court held that each instance of sexual intercourse constitutes a separate crime of adultery, though the same persons and the same offended spouse are involved, and that a second information may be filed against the same accused for later acts of sexual intercourse.

[13] Section 6, P.D. 1835, 16 January 1981.

DISSENTING OPINION

SARMIENTO, J.:

I reiterate my dissent. I submit that in spite of its "clarificatory" resolution[1], the majority has not shown why the arrests in question should after all be sustained.

According to the majority, Rolando Dural (G.R. No. 815677) was validly arrested without a warrant and that his arrest was sufficient compliance with the provisions of Section 5, paragraph (b), Rule 113, of the Rules of Court. According to the majority, he, Dural, was after all committing an offense (subversion being supposedly a continuing offense) and that the military did have personal knowledge that he had committed it. "Personal knowledge", according to the majority, is supposedly no more than "actual belief or reasonable grounds . . . of suspicion," and suspicion is supposedly 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 guilty 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.[2]

As I said, I dissent.

First, and as I held, subversion, as an offense punished by Executive Order No. 167, as amended by Executive Order No. 276, in relation to Republic Act No. 1700[3], is made up of "overt acts." [4] In *People v. Ferrer*[5] this Court defined "overt acts" as follows:

x x x. Indeed, were the Anti-Subversion Act a bill of attainder, it would be totally unnecessary to charge Communists in court, as the law alone, without more would suffice to secure their punishment. But the undeniable fact is that their guilt still has to be judicially established. The Government has yet to prove at the trial that the accused, joined the Party knowingly, willfully and by overt acts, and that they joined the Party, knowing its subversive character and with specific intent to further its basic objective, i.e., to overthrow the existing government by force, deceit, and other illegal means and place the country under the control and domination of a foreign power.

As Ferrer held, the above "overt acts" constitute the essence of "subversion", and as Ferrer has taken pains to

explain, the law requires more than mere membership in a subversive organization to make the accused liable. I respectfully submit that for purposes of arrest without a warrant, the above "overt acts" should be visible to the eyes of the police officers (if that is possible), otherwise the accused can not be said to be committing any offense within the contemplation of the Rules of Court, to justify police action, and otherwise, we would have made "subversion" to mean mere "membership" when, as Ferrer tells us, subversion means more than mere membership.

I find strained the majority's interpretation of "personal knowledge", as the majority would interpret it, as no more than "actual belief or reasonable suspicion," that is, "suspicion . . . based on actual facts . . . [and] founded on probable cause, coupled with good faith . . ."[6] I submit that personal knowledge means exactly what it says — that the peace officer is aware that the accused has committed an offense, in this case, membership in a subversive organization with intent to further the objectives thereof. It is to be noted that prior to their amendment, the Rules (then Section 6) spoke of simple "reasonable ground" — which would have arguably encompassed "actual belief or suspicion . . . coupled with good faith" referred to by the majority. Section 5 (b) as amended, however, speaks of "personal knowledge"; I respectfully submit that to give to "personal knowledge" the same meaning as "reasonable ground" is to make the amendment a useless exercise.

What, furthermore, we have here was a mere "confidential information" that a "sparrow man" had been wounded and was recuperating in the hospital, and that that person was Rolando Dural. Clearly, what we have is second-hand, indeed, hearsay, information, and needless to say, not personal knowledge.

I would like to point out that in the case of *People v. Burgos*[7] this Court rejected a similar arrest because of lack of personal knowledge, and, as the Court held, "[w]hatever knowledge was possessed by the arresting officers came in its entirety from the information furnished by [another] . . ."[8] I do not see how We can act differently here.

I do not find the majority's reliance on the case of *United States v. Santos*[9] to be well-taken. Santos involved a prosecution for coercion (against a peace officer for effecting an arrest without a warrant). Santos, however, did in fact affirm the illegality of the arrest but absolved the peace officer on grounds of good faith. Santos did not say that so long as he, the peace officer, was acting in good faith, as the majority here says that the military was acting in good faith, the arrest is valid. Quite to the contrary, Santos suggested that notwithstanding good faith on the part of the police, the arrest is nevertheless subject to question.

As far as the information leading to the arrest of Dural is concerned, the majority would quite evidently swallow the version of the military as if in the first place, there truly was an information, and that it was reliable, and that "it was found to be true";[10], and as if, in the second place, the hospital authorities (the alleged informants) could have legally tipped the military under existing laws. We have, it should be noted, previously rejected such a species of information because of the lack of "compulsion for [the informant] to state truthfully his charges under pain of criminal prosecution." [11] Here, it is worse, because we do not even know who that informant was.

The majority is apparently unaware that under Executive Order No. 212, amending Presidential Decree No. 169, hospital establishments are required to report cases of acts of violence to "government health authorities" — not to the military.

I am concerned that if the military were truly armed with reliable information and if it did have personal knowledge to believe that Dural had committed an offense, there was no reason for the military to ignore the courts, to which the Constitution after all, gives the authority to issue warrants. As *People v. Burgos* held:

More important, we find no compelling reason for the haste with which the arresting officers sought to arrest the accused. We fail to see why they failed to first go through the process of obtaining a warrant of arrest, if

indeed they had reasonable ground to believe that the accused had truly committed a crime. There is no showing that there was a real apprehension that the accused was on the verge of flight or escape. Likewise, there is no showing that the whereabouts of the accused were unknown.[12]

I do not likewise see how the petitioners Amelia Roque, Wilfredo Buenaobra, Domingo Añonuevo, Ramon Casiple, and Vicky Ocaya (G.R. Nos. 84581-82; 83162) could have been lawfully picked up under similar circumstances. As the majority points out, the military had (again) acted on a mere tip — the military had no personal knowledge (as I elaborated what personal knowledge means). Second, I do not think that the majority can say that since Amelia Roque, et al. "were NPA's anyway" (as Roque, et al. allegedly admitted), immediate arrests were "prudent" and necessary. As I said, that Roque, et al. were admitted "NPA's" is (was) the question before the trial court and precisely, the subject of controversy. I think it is imprudent for this Court to pass judgment on the guilt of the petitioners — since after all, and as the majority points out, we are talking simply of the legality of the petitioners' arrests.

More important, that Roque, et al. "were NPA's anyway" is evidently, a mere say-so of the military, and evidently, the Court is not bound by bare say-so's. Evidently, we can not approve an arrest simply because the military says it is a valid arrest (the accused being "NPA's anyway") — that would be abdication of judicial duty and when, moreover, the very basis of the claim rests on dubious "confidential information".

According to the majority, we are speaking of simple arrests; we are not talking of the guilt or innocence of the accused. I certainly hope not, after the majority referred to Rolando Dural as a "sparrow man" and having Amelia Roque, et al. admit to being "NPA's".

It is to gloss over at any rate, the nature of arrest as a restraint on liberty. It is to me immaterial that the guilt of the accused still has to be established, since meanwhile, the accused are in fact being deprived of liberty. Arrest to me, is something to crow about, even if in the opinion of the majority, it is nothing to crow about (a mere "administrative measure").

I can not, again, accept the validity of the arrests of Deogracia Espiritu or Narciso Nazareno (G.R. Nos. 85727; 86332). Espiritu was supposedly picked up for inciting to sedition, in uttering supposedly, on November 22, 1988, the following:

Bukas tuloy ang welga natin . . . hanggang sa magkagulo na.[13]

Espiritu however was arrested on November 23, 1988, a day later — and in no way is "inciting to sedition" a continuing offense. Obviously, the majority is not saying that it is either, but that:

. . . Many persons may differ as to the validity of such perception and regard the language as falling within free speech guaranteed by the Constitution. But, then, Espiritu has not lost the right to insist, during the trial on the merits, that he was just exercising his right to free speech regardless of the charged atmosphere in which it was uttered. But, the authority of the peace officers to make the arrest, without warrant, at the time the words were uttered, or soon thereafter, is still another thing. In the balancing of authority and freedom, which obviously becomes difficult at times, the Court has, in this case, tilted the scale in favor of authority but only for purposes of the arrest (not conviction). Let it be noted that the Court has ordered the bail for Espiritu's release to be reduced from P60,000.00 to P10,000.00.[14]

And obviously, the majority is concerned about whether or not Espiritu's speech was after all, protected speech, but apparently, that is also of no moment, since: (1) that is a matter of defense; (2) we are talking of mere arrests, and as far as arrests are concerned, "the Court has, in this case, tilted in favor of authority,"[15] and (3) we have, anyway, given a reduced bail to the accused.

First, that the accused's statement is in the category of free speech is not only plain to my mind, it is a question I do not think the majority can rightly evade in these petitions without shirking the Court's constitutional duty. It is to my mind plain, because it does not contain enough "fighting words" recognized to be seditious.[16] Secondly, it is the very question before the Court—whether or not the statement in question constitutes an offense for purposes of a warrantless arrest. It is a perfectly legal question to my mind and I am wondering why we can not answer it.

What the majority has not answered, as I indicated, is that inciting to sedition is in no way a continuing offense, and as I said, the majority is not apparently convinced that it is, either. Of course, the majority would anyway force the issue: "But the authority of the peace officers to make the arrest, without warrant, at the time the words were uttered, or soon thereafter, is still another thing." [17] First, Espiritu was picked up the following day, and in no way is "the following day" "soon thereafter". Second, we would have stretched the authority of peace officers to make warrantless arrests for acts done days before. I do not think this is the contemplation of the Rules of Court.

As in the case of Burgos in *People v. Burgos*, [18] Espiritu was neither "on the verge of flight or escape" [19] and there was no impediment for the military to go through the judicial processes, as there was none in the case of Burgos.

In the case of *People v. Aminnudin*, [20] this Court held that unless there "was a crime about to be committed or had just been committed," and unless there existed an urgency as where a moving vehicle is involved, instant police action can not be justified.

"In the balancing of authority and freedom," states the majority, "the Court has, in this case, tilted in favor of authority but only for purposes of the arrest (not conviction)." [21] It is a strange declaration, first, because it is supported by no authority (why the Court should "tilt" on the side of Government), and second, because this Court has leaned, by tradition, on the side of liberty — as the custodian of the Bill of Rights — even if we were talking of "simple" arrests.

I do not understand why this Court should "tilt . . . the scale in favor of authority . . . in this case," [22] as if to say that normally, this Court would have tilted the scales the other way. I do not understand why these cases are apparently, special cases, and apparently, the majority is not telling us either. I am wondering why, apart from the fact that these cases involve, incidentally, people who think differently from the rest of us.

The majority goes on:

Although the killing of Bunye II occurred on 14 December 1988, while Nazareno's arrest without warrant was made only on 28 December 1988, or 14 days later, the arrest falls under Section 5(b) of Rule 113, since it was only on 28 December 1988 that the police authorities came to know that Nazareno was probably one of those guilty in the killing of Bunye II. [23]

With all due respect, I do not think that the majority is aware of the serious implications of its pronouncement on individual rights (and statutory construction in general), and I feel I am appropriately concerned because as a member of the Court, I am co-responsible for the acts of my colleagues and I am afraid that I may, rightly or wrongly, be in time made to defend such an indefensible pronouncement.

Section 5(b) of Rule 113 is clear and categorical: the offense must have been "just committed" and the authorities must have "personal knowledge".

In no way can an offense be said to have been "just committed" fourteen days after it was in fact (allegedly) committed. In no way can the authorities be said to have "personal knowledge" two weeks thereafter; whatever

"personal knowledge" they have can not possibly be "personal knowledge" of a crime that had "just been committed"; whatever "personal knowledge" they have is necessarily "personal knowledge" of a crime committed two weeks before.

In no way can Nazareno's arrest be said to be an arrest sanctioned by the exceptional provisions of the Rules.

I am not saying that the military can not act in all cases, and it is sheer ignorance to suppose that I am saying it, (or worse, that I am "coddling criminals"). I am not saying that a suspected criminal, if he can not be arrested without a warrant, can not be arrested at all — but that the military should first procure a warrant from a judge before effecting an arrest. It is not too much to ask of so-called law enforcers.

As it is, the majority has enlarged the authority of peace officers to act, when the Rules have purposely limited it by way of an exception, precisely, to the general rule, mandated by the Constitution no less, that arrests may be done only through a judicial warrant. As it is, the majority has in fact given the military the broadest discretion to act, a discretion the law denies even judges[24]—today it is fourteen days, tomorrow, one year, and sooner, a decade. I submit that a year, a decade, would not be in fact unreasonable, following the theory of the majority, since the military can claim anytime that it "found out only later," as the majority did not find it unreasonable for the Capital Command to claim that it "came to know that Nazareno was probably one of those guilty in the killing of Bunye II"[25]—and none of us can possibly dispute it.

I would like to stress strongly that we are not talking of a simple "administrative measure" alone—we are talking of arrests, of depriving people of liberty—even if we are not yet talking of whether or not people are guilty. That we are not concerned with guilt or innocence is hardly the point, I respectfully submit, and it will not minimize the significance of the petitioners' predicament.

With respect to Wilfredo Buenaobra, I submit that the majority has, as in the cases of Amelia Roque, et al., ignored the fact that Buenaobra's alleged "admission" (actually, an uncounselled confession) was precisely, the basis for Buenaobra's arrest. It as to beg the question, I respectfully submit, to approve the military's action for the reason that Buenaobra confessed, because Buenaobra confessed for the reason that the military, precisely, pounced on him. I am not to be mistaken for prejudging Buenaobra's innocence (although it is supposed to be presumed) but I can not imagine that Buenaobra would have voluntarily proclaimed to the military that he was an NPA courier so that the military could pounce on him.

I respectfully submit that the cases *Garcia v. Padilla*[26] and *Ilagan v. Enrile*[27] have seen better days. I do not see how this Court can continuously sustain them "where national security and stability are still directly challenged perhaps with greater vigor from the communist rebels." [28] First and foremost, and as the majority has conceded, we do not know if we are in fact dealing here with "Communists". The case of Deogracias Espiritu, for one, hardly involves subversion. Second, "Communism" and "national security" are old hat — the dictator's own excuses to perpetuate tyranny, and I am genuinely disappointed that we would still fall for old excuses. Third, Garcia and Ilagan rested on supposed grounds that can not be possibly justified in a regime that respects the rule of law — that the Presidential Commitment Order (PCO) is a valid presidential document (Garcia) and that the filing of an information cures a defective arrest (Ilagan). Fourth and finally, it is evident that neither "Communist threat" nor "national security" are valid grounds for warrantless arrests under Section 5(b) of Rule 113.

I most respectfully, submit that Garcia and Ilagan have not only been diluted by subsequent jurisprudence (e.g., *People v. Burgos*, supra), they are relics of authoritarian rule that can no longer be defended, if they could have been defended, in Plaza Miranda or before our own peers in the bar.

"What is important," says the majority, "is that every arrest without warrant be tested as to its legality, via habeas corpus proceedings." [29] I suppose that goes without saying. But it is also to patronize the petitioners and simply,

to offer a small consolation, when, after all, this Court is validating their continued detention.[30] With all due respect, I submit that it is nothing for which the public should be elated.

A Final Word

As I began my dissent, in this Resolution and the Decision sought to be reconsidered, I reiterate one principle: The State has no right to bother citizens without infringing their right against arbitrary State action. "The right of the people," states the Constitution, "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 . . ."[31] "The State," the Charter likewise states, "values the dignity of every human person and guarantees full respect for human rights." [32] The Constitution states the general rule — the majority would make the exception the rule, and the rule the exception. With all due respect, this is not what constitutionalism is all about.

I submit that the "actual facts and circumstances" the majority refers to are, in the first place, doubtful, the "actual facts and circumstances" being no more than "confidential information" (manufactured or genuine, we have no way of telling) and in the second place, any information with which the military (or police) were armed could no more than be hearsay, not personal, information. I submit that the "actual facts and circumstances" the majority insists on can not justify the arrests in question under Section 5(b) of Rule 113, the rule the majority insists is the applicable rule.

Apparently, Section 5(b) is not the applicable rule, as far as Deogracias Espiritu and Narciso Nazareno are concerned; certainly, it is not the Section 5(b) I know. As I indicated, Espiritu was arrested one day after the act, allegedly, inciting to sedition; Nazareno was picked up four-teen days after it (allegedly, murder). Yet, the majority would approve the police's actions nonetheless because the police supposedly "found out only later." I submit that the majority has read into Section 5(b) a provision that has not been written there.

"More than the allure of popularity or palatability to some groups," concludes the majority, "what is important is that the Court be right." [33]

Nobody has suggested in the first place, that Umil was and is a question of popularity or palatability. Umil is a question, on the contrary, of whether or not the military (or police), in effecting the arrests assailed, had complied with the requirements of law on warrantless arrests. Umil is a question of whether or not this Court, in approving the military's actions, is right.

In spite of "EDSA", a climate of fear persists in the country, as incidences of disappearances, torture, hamletting, bombings, saturation drives, and various human rights violations increase in alarming rates. In its update for October, 1990, the Task Force Detainees of the Philippines found:

An average of 209 arrested for political reasons monthly since 1988, 94% of them illegally;

Four thousand four hundred eight (4,408) political detentions from January, 1989 to September, 1990, 4,149, illegally;

Of those arrested, 535 showed signs of torture; 280 were eventually salvaged, 40, of frustrated salvage, and 109 remained missing after their arrest;

Forty (40) cases of massacres, with 218 killed; 54 cases of frustrated massacre, in which 157 were wounded;

The victims belonged to neighborhood and union organizations;

Since February, 1986, 532 of those illegally arrested were women;

From January to June 1990, 361 children were detained for no apparent reason;

One million ten thousand four hundred nine (1,010,409) have been injured as a consequence of bombings, shellings, and food blockades undertaken by the military since 1988.[34]

It is a bleak picture, and I am disturbed that this Court should express very little concern. I am also disappointed that it is the portrait of the Court I am soon leaving. Nonetheless, I am hopeful that despite my departure, it will not be too late.

[1] Resolution, 1.

[2] *Supra*; emphasis in the original.

[3] The majority cites Presidential Decrees Nos. 885 and 1835 and "related decrees"; both Presidential Decrees Nos. 885 and 1835 have been repealed by Executive Order No. 167, as amended by Executive Order No. 267.

[4] Please note that under Section 6 of Presidential Decree No. 1835, "[t]he following acts shall constitute prima facie evidence of membership in any subversive organization: (a) Allowing himself to be listed as a member in any book or any of the lists, records, correspondence, or any other document of the organization; (b) Subjecting himself to the discipline of such association or organization in any form whatsoever; (c) Giving financial contribution to such association or organization in dues, assessments, loans or in any other forms; (d) Executing orders, plans or directives of any kind of such association or organization; (e) Acting as an agent, courier, messenger, correspondent, organizer, or in any other capacity, on behalf of such association or organization; (f) Conferring with officers or other members of such association or organization in furtherance of any plan or enterprise thereof; (g) Transmitting orders, directives, or plans of such association or organization orally or in writing or any other means of communication such as by signal, semaphore, sign or code; (h) Preparing documents, pamphlets, leaflets, books, or any other type of publication to promote the objectives and purposes of such association or organization; (i) Mailing, shipping, circulating, distributing, or delivering to other persons any material or propaganda of any kind on behalf of such association or organization; (j) Advising, counseling, or in other way giving instruction, information, suggestions, or recommendations to officers, or members or to any other person to further the objectives of such association or organization; and (k) Participating in any way in the activities, planning action, objectives, or purposes of such association or organization." Please note that none of these are alleged by the military in this case, assuming that the Decree still exists.

[5] Nos. L-32613-14, December 27, 1972, 48 SCRA 382; italics supplied. In *Taruc v. Erica* (No. L-34856, Nov. 29, 1989, 168 SCRA 63, 66-76), I held that *People v. Ferrer* is no longer a good basis for sustaining the Anti-Subversion Act. I am not here invoking *Ferrer* to sustain it, but to discuss its elaboration of the provisions of Republic Act No. 1700.

[6] Resolution, *supra*.

[7] G.R. No. 68955, September 4, 1986, 144 SCRA 1.

[8] *Supra*, 14.

[9] 36 Phil. 853 (1917).

[10] Resolution, *supra*, 10.

[11] *People v. Burgos*, *supra*, 15.

[12] *Supra*.

[13] Resolution, *supra*, 15.

[14] Supra, 16.

[15] Supra.

[16] See *United States v. Apurado*, 7 Phil. 422 (1907).

[17] Resolution, supra; italics supplied.

[18] Supra.

[19] At 15.

[20] G.R. No. 74869, July 6, 1988, 163 SCRA 402.

[21] Resolution, supra.

[22] Supra, 17.

[23] Supra.

[24] See RULES OF COURT, supra, Rule 112, sec. 5, on the number of days a judge may act.

[25] Resolution, supra.

[26] G.R. No. 61388, April 20, 1983, 121 SCRA 472.

[27] G.R. No. 70748, October 21, 1985, 139 SCRA 349.

[28] Resolution, supra, 18-19.

[29] Resolution, supra, 19.

[30] Except for Rolando Dural, the rest of the petitioners have been acquitted by the lower courts trying their cases.

[31] CONST., art. III, sec. 2.

[32] Supra, art. II, sec. 11.

[33] Resolution, supra, 19.

[34] Manila Chronicle, October, 1990.

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