

### THIRD DIVISION

**G.R No. 249274 – SYRUZ J. ALUZAN, JOSE HENRY L. ARELLANO AND FERDINAND M. LAVIN, *Petitioners*, v. EDDIE FORTUNADO, *Respondent*.**

Promulgated:

August 30, 2023

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### SEPARATE CONCURRING OPINION

**SINGH, J.:**

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

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

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

Article 125 of the RPC<sup>3</sup> provides:

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

<sup>1</sup> *Ponencia*, p. 9.

<sup>2</sup> *Id.*, at 10.

<sup>3</sup> REVISED PENAL CODE (1930), art. 125, as amended by Executive Orders Nos. 59 (1986), and 272 (1987).



penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent; and thirty-six (36) hours, for crimes or offenses punishable by afflictive or capital penalties, or their equivalent.

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

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

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

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

It was only after Fortunado’s voluntary stay for 14 days and his subsequent transfer to NBI Manila that criminal charges were brought against him.<sup>6</sup>

It is important to note that clarity on the circumstances surrounding Fortunado’s stay in NBI Bacolod is central to the determination of the liability of the NBI Bacolod officers (**petitioners**). In his Dissenting Opinion, Associate Justice Alfredo Benjamin S. Caguioa opines that while the

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

<sup>5</sup> *Ponencia*, p. 10.

<sup>6</sup> *Id.*, at 11.

petitioners are not solely to blame, their negligence contributed to the indefinite detention of Fortunado.<sup>7</sup>

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

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

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

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

  
**MARIA FILOMENA D. SINGH**  
Associate Justice

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<sup>7</sup> Dissenting Opinion of Associate Justice Alfredo Benjamin S. Caguioa, pp. 8-9.

<sup>8</sup> Id., at p. 6.