

THIRD DIVISION

[G.R. No. 230825, June 10, 2020]

**PASCASIO DUROPAN AND RAYMOND NIXER COLOMA,
PETITIONERS, V. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

D E C I S I O N

LEONEN, J.:

An *in flagrante delicto* arrest that does not comply with the overt act test is constitutionally infirm.^[1] Two elements must concur, the person to be arrested must execute an overt act indicating that he or she has just committed, is actually committing, or is attempting to commit a crime; and that such overt act is done in the presence or within the view of the arresting officer.^[2]

This resolves a Petition for Review on Certiorari^[3] assailing the Court of Appeals Decision^[4] and Resolution.^[5] The Court of Appeals upheld the Regional Trial Court Decision,^[6] which affirmed the Municipal Circuit Trial Court Decision^[7] finding Pascasio Duropan (Duropan) and Raymond Nixer Coloma (Coloma) guilty beyond reasonable doubt of Unlawful Arrest under Article 269 of the Revised Penal Code.

Duropan and Coloma were charged in an Information which read:

That on or about the evening of the 7th day of March 2009, in Barangay Lincod, Municipality of Maribojoc, Province of Bohol, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping each other, did then and there willfully, unlawfully, feloniously, and not having authorized by law, arrest a certain WILLIAM PACIS without reasonable ground, for the purpose of delivering him to the proper authority; to the damage and prejudice of the offended victim in the amount to be proved during the trial.

Acts committed contrary to the provision of Article 269 of the Revised Penal Code.^[8]

On arraignment, Duropan and Coloma pleaded not guilty to the crime charged. Trial then ensued. As the Rule on Summary Procedure governed the case, witnesses' affidavits were presented in lieu of their direct testimonies.^[9]

According to the prosecution, Duropan and Coloma were Barangay Kagawad and Barangay Tanod, respectively, of Lincod, Maribojoc, Bohol.^[10]

The Abatan Lincod Mangroves Nipa Growers Organization or simply, "ALIMANGO" is a cooperative duly registered with the Cooperative Development Authority. Since

1998, it was authorized to develop, utilize, and protect the Mangrove-Nipa Area in Lincod, Maribojoc, Bohol. Its members cut, gather, and weave nipa palms.^[11]

On March 7, 2009 at 11:30 a.m., Duropan, Coloma, and another barangay official saw William Pacis (Pacis), Lino Baldoza Jr., Jeremias Moquila, Melvin Magbanua, and Ronnel Zambra harvesting nipa palm in a plantation.^[12] Coloma approached them and asked who gave them authority to harvest. Pacis replied that they were ALIMANGO members.^[13]

Doubting Pacis' claim, Duropan and Coloma pushed Pacis and his companions on board two (2) paddle boats. Pacis then protested and inquired whether Duropan and Coloma can arrest them without a warrant. Despite their objections, Pacis' group was brought to the Police Station of Maribojoc, Bohol.^[14]

Upon investigation, Pacis and his companions were released. The Maribojoc Chief of Police determined that the barangay officials had no legal basis to arrest Pacis.^[15]

In their affidavits, Duropan and Coloma claimed that the arrest was pursuant to Barangay Resolution No. 2, which was enacted the day prior to the incident. It ordered the barangay officials to conduct "surveillance on the mangrove/nipa area due to several complaints of illegal cutting of mangroves and nipa leaves."^[16]

They narrated that they were conducting a surveillance operation when they saw Pacis and his group cutting nipa leaves. Duropan believed that Pacis was committing theft because he knew that the nipa plantation belonged to Calvin Cabalit (Cabalit).^[17]

Duropan and Coloma averred that Pacis' claim that he was a member of the "ALIMANGO Association" was doubtful. According to them, ALIMANGO is an *organization*, not an association.^[18] While questioning the group, Pacis allegedly lost his temper and punched Duropan's shoulder.^[19] In light of his violent outburst, they brought him to the police station.^[20]

In its Decision,^[21] the Municipal Circuit Trial Court of Cortes found Duropan and Coloma guilty of Unlawful Arrest. It found that all the essential elements of the crime were present^[22] and noted that both accused admitted to knowing Pacis prior to the arrest.^[23] It reasoned that instead of immediately arresting them, Duropan and Coloma should have given them time to prove their claim. It noted that this is relevant since "the accuseds [sic] themselves had no proof that a certain Calvin Cabalit owns the area where Pacis and his group cut nipas."^[24] It dismissed the contention that Pacis assaulted Duropan.^[25] The dispositive portion of the Decision read:

WHEREFORE, finding accuseds [sic] Pascasio Duroan and Raymond Nixer Coloma GUILTY beyond reasonable ground of the crime of Unlawful Arrest, each of them is hereby sentenced to the penalty of imprisonment of from [sic] TWO (2) MONTHS AND ONE (1) DAY TO FOUR (4) MONTHS of *arresto mayor* and a fine of P500.00 each, with subsidiary imprisonment in case of insolvency.

SO ORDERED.^[26]

On May 17, 2013, the Regional Trial Court, Tagbilaran City rendered its Decision^[27] affirming Duropan and Coloma's guilt. It found that Pacis and his companions did not manifest any suspicious behavior that justified an *in flagrante delicto* arrest.^[28] It affirmed the Municipal Circuit Trial Court's conclusion that the warrantless arrest was illegal.^[29]

The Regional Trial Court modified the imposed penalty, thus:

WHEREFORE, the DECISION rendered by the 1st Municipal Circuit Trial Court, Cortes-Antequera-Maribojoc, Cortes, Bohol dated November 23, 2011 in Criminal Case No. M-1467 for Unlawful Arrest is **AFFIRMED with MODIFICATION**. Accused-appellant PASCASIO DUROPAN and RAYMOND NIXER COLOMA are found guilty beyond reasonable doubt for the crime of Unlawful Arrest penalized under Article 269 of the Revised Penal Code and hereby imposes a penalty of imprisonment of Two (2) months and One (1) Day of *arresto mayor* medium and fine of P500.00 each plus costs.

SO ORDERED.^[30]

Duropan and Coloma's Motion for Reconsideration was denied. Thus, they filed a Petition for Review before the Court of Appeals.^[31]

In its October 23, 2015 Decision,^[32] the Court of Appeals denied the appeal and affirmed the trial court's Decision:

WHEREFORE, the appeal is hereby DENIED. The Decision of the RTC, Branch 4, Tagbilaran City, Bohol, in Criminal Case No. 15504 is hereby AFFIRMED with modification that the payment of the fine shall earn 6% interest rate per annum commencing from the finality of this decision until fully paid.

SO ORDERED.^[33]

The Court of Appeals held that there was no sufficient basis for Duropan and Coloma to effect a warrantless arrest.^[34] There was no overt act which indicated that Pacis "had just committed, was committing, or was about to commit a crime[.]"^[35]

Duropan and Coloma moved for reconsideration, but the motion was denied in the Court of Appeals Resolution.^[36]

Thus, on March 10, 2017, Duropan and Coloma filed this Petition for Review on Certiorari.^[37]

Petitioners posit that not all elements of the crime were present. They argue that complainant Pacis was not arrested, but was merely invited to the police station.^[38] They contend that it was their duty to investigate whether he was authorized to harvest the nipa leaves. They argue that they had reasons to doubt his claim, considering that he referred to ALIMANGO Organization as "ALIMANGO Association." Moreover, they believed in good faith that the land he was harvesting from belonged to Cabalit.^[39]

Petitioners maintain that complainant attacked them, which is why he was invited to the police station.^[40] In the alternative, they argue that if he was indeed arrested, there was a reasonable ground for it.^[41]

In its June 28, 2017 Resolution,^[42] this Court required respondent to comment on the petition within 10 days from notice. On August 23, 2017, respondent filed a Motion for Extension.^[43] Thereafter, on October 23, 2017, it filed its Comment.^[44]

Respondent counters that petitioners' guilt was sufficiently proved,^[45] as all the elements of the crime were present.^[46] It reasons that despite reports of rampant illegal cutting of mangrove and nipa, petitioners ought to be diligent in verifying reports rather than surreptitiously arresting a private person.^[47] Further, contrary to petitioners' claim, they acted in bad faith in opting to arrest complainant despite no genuine inquiry into the circumstances.^[48]

In its January 10, 2018 Resolution,^[49] this Court granted the motion for extension, noted respondent's Comment on the petition, and required petitioners to file a reply within 10 days from notice.

On March 2, 2018, petitioners filed their Reply.^[50] This Court noted this in its June 6, 2018 Resolution.^[51]

In their Reply, petitioners reiterate that not all elements of the crime of unlawful arrest were attendant in this case,^[52] since complainant was neither arrested nor detained for the purpose of delivering him to the proper authorities.^[53] Petitioners assert that holding them liable for the crime of unlawful arrest is tantamount to requiring them "to be as sophisticated as the court [in] determining [with] absolute certainty beyond reasonable doubt the *ground* for the arrest of persons[.]"^[54]

The issues for resolution are:

First, whether or not petitioners Pascasio Duropan and Raymond Nixer Coloma arrested William Pacis.

Second, whether or not there was reasonable ground to arrest Pacis, which warrants petitioners' acquittal from the charge of unlawful arrest.

This Court denies the Petition.

I

The Municipal Circuit Trial Court charged and convicted petitioners with the crime of unlawful arrest penalized under Article 269 of the Revised Penal Code, which states:

ARTICLE 269. *Unlawful Arrest.* — The penalty of *arresto mayor* and a fine not exceeding 500 pesos shall be imposed upon any person who, in any case other than those authorized by law, or without reasonable ground therefor, shall arrest or detain another for the purpose of delivering him to the proper authorities.^[55]

The crime of unlawful arrest punishes an offender's act of *arresting or detaining another to deliver him or her to the proper authorities*, when the arrest or detention

is not authorized, or that there is no reasonable ground to arrest or detain the other.

As worded, *any person* may be indicted for the crime of unlawful arrest. This was affirmed in *People v. Malasugui*,^[56] where this Court considered whether a public officer may be held liable under this crime.

Malasugui explained that a public officer may be exculpated from the crime of unlawful arrest under specific circumstances:

[U]nder the law, members of the Insular Police or Constabulary as well as those of the municipal police and of chartered cities like Manila and Baguio, and even of townships (secs. 848, 2463, 2564, 2165 and 2383 of the Revised Administrative Code) may make arrests without judicial warrant, not only when a crime is committed or about to be committed in their presence, but also when there is reason to believe or sufficient ground to suspect that one has been committed and that it was committed by the person arrested by them. . . An arrest made under said circumstances is not unlawful but perfectly justified[.]^[57]

Malasugui inferred that a public officer who does not have the authority to arrest shall be criminally liable. Even when a public officer is authorized to arrest, he or she must have a judicial warrant. However, when the enumerated circumstances exist, the absence of a judicial warrant is justified and does not expose the public officer to criminal liability.

I (A)

There are several crimes defined in the Revised Penal Code pertaining to the curtailment of a person's liberty. The crimes against the fundamental laws of the state^[58] and the crimes against personal liberty^[59] are differentiated, thus:

Failure to judicially charge within the prescribed period renders the public officer effecting the arrest liable for the crime of *delay in the delivery of detained persons under Article 125 of the Revised Penal Code*. Further, if the warrantless arrest was without any legal ground, the arresting officers become liable for *arbitrary detention under Article 124*. However, ***if the arresting officers are not among those whose official duty gives them the authority to arrest***, they become liable for *illegal detention under Article 267 or 268*. If the arrest is for the purpose of delivering the person arrested to the proper authorities, but it is done without any reasonable ground or any of the circumstances for a valid warrantless arrest, the arresting persons become liable for *unlawful arrest under Article 269*.^[60] (Citations omitted, emphasis supplied)

A public officer whose official duty does not involve the authority to arrest may be liable for illegal detention. Illegal detention, defined under Articles 267^[61] and 268^[62] of the Revised Penal Code penalizes "*any private individual who shall kidnap or detain another, or in any other manner deprive him [or her] of his [or her] liberty[.]*"^[63]

A public officer who has no duty to arrest or detain a person is deemed a private individual, in contemplation of Articles 267 and 268 of the Revised Penal Code. Even when a public officer has the legal duty to arrest or detain another, but he or she