395 Phil. 601

SECOND DIVISION

[G.R. No. 131492, September 29, 2000]

ROGER POSADAS, ROSARIO TORRES-YU, AND MARICHU LAMBINO, PETITIONERS, VS. THE HON. OMBUDSMAN, THE SPECIAL PROSECUTOR, AND ORLANDO V. DIZON, RESPONDENTS.

D E C I S I O N

MENDOZA, J.:

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

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

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

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

> That on or about December 12, 1994 and for sometime prior or subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, namely: ROGER POSADAS, Chancellor; ROSARIO YU - Vice Chancellor; ATTY. MARICHU LAMBINO - Asst. Legal Counsel; and COL. EDUARDO BENTAIN - Chief, Security Force, all of the University of the Philippines, Diliman,

> Quezon City, all public officers, while in the performance of their respective official functions, taking advantage of their official duties and committing the crime in relation to their office, conspiring and confederating with each other and with a certain ATTY. VILLAMOR, did then and there wilfully, knowingly and criminally obstruct, impede and frustrate the apprehension of FRANCIS CARLO TAPARAN and RAYMUNDO NARAG, both principal suspects involved in the brutal killing of DENNIS VENTURINA, a U.P. graduating student and Chairperson of the UP College of Administration, Student Council, and delaying the investigation and prosecution of the said heinous case by harboring and concealing said suspects thus, leading to the successful escape of suspects Narag and another principal suspect JOEL CARLO DENOSTA; that said above acts were done by the above-named accused public officials despite their full knowledge that said suspects were implicated in the brutal slaying of said Dennis Venturina, thus preventing the suspects arrest, prosecution and conviction.
>
> CONTRARY TO LAW.

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

Petitioners contend that:

> I. THE HONORABLE OMBUDSMAN COMMITTED GRAVE ABUSE OF DISCRETION WHEN HE RULED THAT: 1) STUDENTS COULD BE ARRESTED WITHOUT WARRANT ON MERE SUSPICION; 2) PD 1829 INCLUDES ARRESTS WITHOUT WARRANTS ON MERE SUSPICION; AND WHEN HE REVERSED THE FINDINGS AND RESOLUTION OF THE SPECIAL PROSECUTION OFFICER, THE DEPUTY SPECIAL PROSECUTOR AND THE SPECIAL PROSECUTOR, WHO CONDUCTED THE REINVESTIGATION OF THE CASE; AND FINALLY WHEN HE RESOLVED THAT PETITIONERS SHOULD BE SUBJECTED TO PUBLIC TRIAL WHEN THERE IS NO PROBABLE CAUSE AND NO BASIS.
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> II. SECTION 1, PARAGRAPH C OF PRESIDENTIAL DECREE NO. 1829 IS UNCONSTITUTIONAL.[5]

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

First. In view of Art. III, §2 of the Constitution, the rule is that no arrest may be made except by virtue of a warrant issued by a judge after examining the complainant and the witnesses he may produce and after finding probable cause to believe that the person to be arrested has committed the crime. The exceptions

when an arrest may be made even without a warrant are provided in Rule 113, §5 of the Rules of Criminal Procedure which reads:

> (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
>
> (b) When an offense has in fact just been committed, and he has personal knowledge of the facts indicating that the person to be arrested has committed it;
>
> (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

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

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

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

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

In contrast, the NBI agents in the case at bar tried to arrest Narag and Taparan four

days after the commission of the crime. They had no personal knowledge of any fact which might indicate that the two students were probably guilty of the crime. What they had were the supposed positive identification of two alleged eyewitnesses, which is insufficient to justify the arrest without a warrant by the NBI.

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

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

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

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

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

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

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