Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PASCASIO DUROPAN AND RAYMOND NIXER COLOMA, Petitioners,	**G.R. No. 230825** Present:
-versus-	LEONEN, *J., Chairperson,* GESMUNDO, CARANDANG, ZALAMEDA, and GAERLAN, *JJ.*
PEOPLE OF THE PHILIPPINES, Respondent.	**Promulgated:** June 10, 2020

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DECISION

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

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1 *Veridiano v. People*, 810 Phil. 658 (2017) [Per J. Leonen, Second Division].
2 Id. citing *People v. Cogaed*, G.R. No. 200334, July 30, 2014 [Per J. Leonen, Third Division].
3 *Rollo*, pp. 3–16.
4 Id. at 23–33. The Decision dated October 23, 2015 docketed as CA-G.R. CR No. 02182 was penned by Associate Justice Edward B. Contreras and concurred in by Associate Justices Edgardo L. Delos Santos (Chairperson) and Renato C. Francisco of the Nineteenth Division, Court of Appeals, Cebu City.
5 Id. at 19–20. The Resolution dated February 1, 2017 docketed as CA-G.R. CR No. 02182 was penned by Associate Justice Edward B. Contreras and concurred in by Associate Justices Edgardo L. Delos Santos (Chairperson) (now Associate Justice of the Supreme Court) and Pamela Ann Abella Maxino of the Special Former Nineteenth Division, Court of Appeals, Cebu City.

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.
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> 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]

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6 Id. at 34–40. The Decision dated May 17, 2013 docketed as Criminal Case No. 15504 was penned by Presiding Judge Sisinio C. Virtudazo of Branch 4, Regional Trial Court, Tagbilaran.

7 Id. at 42–48. The Decision dated November 23, 2011 in Criminal Case No. M-1467 was penned by Presiding Judge Maria Elisa Ello-Ochoco of 1st Municipal Circuit Trial Court, Cortes, Bohol.

8 *Rollo*, p. 24. The Information was quoted in the Decision of the Court of Appeals.

9 Id.

10 Id.

11 Id.

12 Id. at 42.

13 Id. at 24.

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

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14 Id. at 25.
15 Id.
16 Id.
17 Id.
18 Id at 44.
19 Id. at 25.
20 Id. The defense claimed that only Pacis was arrested.
21 Id. at 42–48.
22 Id. at 48.
23 Id. at 47.

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 Duropan 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.
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> 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 ₱500.00 each plus costs.
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> 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

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24 Id. at 47.
25 Id. at 48.
26 Id. at 48.
27 Id. at 34–40.
28 Id. at 39.
29 Id. at 39.
30 Id. at 39–40.
31 Id. at 27.
32 Id. at 23–33.

> earn 6% interest rate *per annum* commencing from the finality of this decision until fully paid.
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> 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

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33 Id. at 32.
34 Id. at 31.
35 Id. at 30.
36 Id. at 19–20.
37 Id. at 3–16.
38 Id. at 8.
39 Id. at 7.
40 Id.
41 Id.
42 Id. at 50–51.
43 Id. at 54–63.
44 Id. at 74–89.
45 Id. at 78.
46 Id. at 79.

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:

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47 Id. at 83.
48 Id. at 85.
49 Id. at 90–91.
50 Id. at 92–96.
51 Id. at 100.
52 Id. at 92.
53 Id. at 93.
54 Id. at 94–95.

> 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:

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55 REV. PEN. CODE, art. 269.
56 63 Phil. 221 (1936) [Per J. Diaz, En Banc].
57 Id. at 226–227.
58 REV. PEN. CODE, Title II.
59 REV. PEN. CODE, Title IX.

> 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 fails to show legal grounds for detention, "the public officer is deemed to have acted in a private capacity and is considered a 'private individual.'"[64]

In *Osorio v. Navera*,[65] Staff Sergeant Osorio, a ranking officer of the Armed Forces of the Philippines, filed a Petition for Issuance of Writ of Habeas Corpus before the Court of Appeals. He argued that he may not be charged with kidnapping and serious illegal detention under Article 267 of the Revised Penal Code, considering that the felony penalizes private individuals

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60 Dissenting Opinion of Former Chief Justice Sereno in *Lagman v. Medialdea,* 812 Phil. 628 (2017) [Per J. Del Castillo, En Banc].

61 REV. PEN. CODE, art. 267 provides:

Article 267. *Kidnapping and serious illegal detention. - Any private individual* who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of reclusion perpetua to death:

1. If the kidnapping or detention shall have lasted more than five days.

2. If it shall have been committed simulating public authority.

3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made.

4. If the person kidnapped or detained shall be a minor, female or a public officer.

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances abovementioned were present in the commission of the offense. (Emphasis supplied)

62 REV. PEN. CODE, Article 268 provides:

Article 268. *Slight illegal detention.* - The penalty of reclusion temporal shall be imposed upon *any private individual* who shall commit the crimes described in the next preceding article without the attendance of any of circumstances enumerated therein. . . (Emphasis supplied)

63 REV. PEN. CODE, Article 267.

64 *Osorio v. Navera*, G.R. No. 223272, February 26, 2018, 856 SCRA 435, [Per J. Leonen, Third Division].

65 Id.

only. In rejecting this contention and affirming the Court of Appeals' denial of his petition, this Court explained:

> SSgt. Osorio was charged with kidnapping, a crime punishable under Article 267 of the Revised Penal Code. Applying Republic Act No. 7055, Section 1, the case shall be tried by a civil court, specifically by the Regional Trial Court, which has jurisdiction over the crime of kidnapping. The processes which the trial court issued, therefore, were valid.
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> Contrary to SSgt. Osorio's claim, the offense he committed was not service-connected. The case filed against him is none of those enumerated under Articles 54 to 70, Articles 72 to 92, and Articles 95 to 97 of the Articles of War.
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> Further, kidnapping is not part of the functions of a soldier. Even if a public officer has the legal duty to detain a person, the public officer must be able to show the existence of legal grounds for the detention. Without these legal grounds, the public officer is deemed to have acted in a private capacity and is considered a "private individual." The public officer becomes liable for kidnapping and serious illegal detention punishable by *reclusion perpetua*, not with arbitrary detention punished with significantly lower penalties.
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> The cases cited by respondents are on point. In *People v. Santiano*, members of the Philippine National Police were convicted of kidnapping with murder. On appeal, they contended that they cannot be charged with kidnapping considering that they were public officers. This Court rejected the argument and said that "in abducting and taking away the victim, [the accused] did so neither in furtherance of official function nor in the pursuit of authority vested in them. It is not, in fine, in relation to their office, but in purely private capacity, that they [committed the crime]." This Court thus, affirmed the conviction of the accused in *Santiano*.
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> In *People v. PO1 Trestiza*, members of the Philippine National Police were initially charged with kidnapping for ransom. The public prosecutor, however, filed a motion to withdraw information before the trial court and filed a new one for robbery. According to the public prosecutor, the accused cannot be charged with kidnapping because the crime may only be committed by private individuals. Moreover, the accused argued that the detention was allegedly part of a "legitimate police operation."
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> The trial court denied the motion to withdraw. It examined the Pre-Operation/Coordination Sheet presented by the defense and found that it was neither authenticated nor its signatories presented in court. The defense failed to show proof of a "legitimate police operation" and, based on *Santiano*, the accused were deemed to have acted in a private capacity in detaining the victims. This Court affirmed the conviction of the police officers for kidnapping.
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> It is not impossible for a public officer to be charged with and be convicted of kidnapping as *Santiano* and *Trestiza* illustrated. SSgt. Osorio's claim that he was charged with an "inexistent crime" because he is a public officer is, therefore, incorrect.[66] (Citations omitted, emphasis in the original)

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[66] Id. at 455–456.

Thus, public officers who have no duty to arrest or detain a person, or those who may have such authority but fail to justify the arrest or detention, may be indicted for kidnapping or serious illegal detention or slight illegal detention.

I (B)

Inquiry is incumbent on whether the person implementing the arrest has the official duty to arrest or detain, and whether he or she had reasonable ground to effect the apprehension in that instance.

In the crime of unlawful arrest, the offender who arrested or detained another intended to deliver the apprehended person to the proper authorities, considering he or she does not have the authority. This act of conducting the apprehended persons to the proper authorities takes the offense out of the crime of illegal detention.[67]

As early as 1908, in *United States v. Fontanilla*,[68] this Court had differentiated unlawful arrest from illegal detention. Santiago Fontanilla (Fontanilla) found Apolonio de Peralta (de Peralta), Emeterio Navalta (Navalta), and several laborers tilling his land. De Peralta insisted that the land was his brother's. A fight ensued, which ended when Fontanilla captured and tied de Peralta and Navalta with a rope. He then brought them to the municipal jail.

The trial court ruled that Fontanilla was guilty of illegal detention under Article 481 of the old Penal Code.[69] This Court modified the ruling, and held that Fontanilla was not guilty of illegal detention, but of unlawful detention under Article 483 of the Penal Code,[70] the precursor to unlawful arrest under Article 269 of the Revised Penal Code:

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67 *See U.S. v. Fontanilla*, 11 Phil. 233 (1908) [Per J. Carson, En Banc].

68 Id.

69 THE OLD PENAL CODE, art. 481 provides:
ARTICLE 481. Any private individual who shall lock up or detain another, or in any manner deprive him of his liberty, shall suffer the penalty of *prisión mayor*.
The same penalty shall be imposed upon any person who shall provide a place for the commission of the crime.
If the offender shall release the person so locked up or detained, within three days after the commencement of the detention, without having attained the purpose intended, and before the institution of criminal proceedings against him, the penalty shall be *prisión correccional* in its minimum and medium degrees and a fine of not less than three hundred and twenty-five and not more than three thousand two hundred and fifty pesetas.

70 THE OLD PENAL CODE, art. 483 provides:
ARTICLE 483. Any person who in any case other than that permitted by law, or without reasonable ground therefor, shall arrest or detain another for the purpose of taking the latter before the authorities shall suffer the penalties of *arresto menor* and a fine of not less than three hundred and twenty-five and not more than three thousand two hundred and fifty pesetas.

> It does not appear that the persons whom the accused arrested committed any crime which would justify their arrest without warrant by a peace officer, and the evidence of record leaves no room for doubt that there was no justification whatever for their arrest by a private person. The *accused was not a peace officer, and was not exercising any public function when he made the arrest, nor did he have any authority to seize trespassers upon his land and commit them to the public jail*, yet the fact remains that he did apprehend and detain these parties, and turn them over to the authorities.
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> Article 483 of the Penal Code provides that any person who, cases permitted by law being excepted, shall without sufficient reason, apprehend or detain another, in order to turn him over to the authorities, shall be punished with the penalties of *arresto menor* and the fine of 325 to 3,250 pesetas, and the offense committed by the accused clearly falls under the provisions of this article. The trial court was of opinion that the offense committed is that prescribed by article 481, which provides that any private person who shall lock up or detain another, or in any way deprive him of his liberty shall be punished with the penalty of *prision mayor*. We think, however, that ***the fact that the accused, after he had apprehended the complaining witnesses, immediately conducted them to the municipal jail, and thus turned them over to the authorities, takes the offense out of that article and brings it within the purview of article 483.***[71] (Emphasis supplied.)

Rule 113, Section 5 of the Revised Rules of Criminal Procedure[72] permits warrantless arrests in certain instances. A public officer who does not have the official duty to arrest or detain may lawfully do so, and effect a citizen's arrest. Petitioners admittedly attempted this here.

Finally, courts convict or acquit based on what the information charges and the evidence presented during trial. This is called *prosecutorial discretion* in charging the offense. It is the prosecutor who decides what felony or offense to charge based on the evidence presented to its office.

Here, it was entirely left for prosecutorial discretion to charge either illegal detention or unlawful arrest. For unlawful arrest, the added element to be proved is whether from the overt facts of the case, there was a clear intent to submit the persons arrested or detained for the purpose of prosecution. The

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Any person who shall unlawfully detain any other person and shall fail to give account of his whereabouts, or to prove that he has set such person at liberty, shall suffer a penalty from *cadena temporal* in its maximum degree to *cadena perpetua*.

71 *U.S. v. Fontanilla*, 11 Phil. 233, 235 (1908) [Per J. Carson, En Banc].

72 RULES OF COURT, Rule 113, sec. 5 provides:

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 just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances 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 is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

prosecutor could have also charged illegal detention, which means that the intent to present for legal detention and prosecution need not be proven. However, in this case, the prosecutors decided to charge unlawful arrest only, with a significantly lower penalty.

Thus, to prosecute accused of the crime of unlawful arrest successfully, the following elements must be proved:

(1) that the offender arrests or detains another person;

(2) that the arrest or detention is to deliver the person to the proper authorities; and

(3) that the arrest or detention is not authorized by law or that there is no reasonable ground to.

We affirm the findings of the three tribunals that all the elements constituting the crime of unlawful arrest are present in this case. Hence, petitioners' guilt beyond reasonable doubt is likewise affirmed.

II

Despite petitioners' challenge, the prosecution established that petitioners *arrested* Pacis *to bring him to the proper authorities*.

On one hand, the petitioners' claim that they merely invited Pacis to the police station to investigate whether he had the authority to harvest nipa. On the other, they contend that he got violent which led them to arrest him.

Whatever the reason for the apprehension, it is apparently conceded that Pacis was brought to the Maribojoc police station, the *proper authorities* contemplated in Article 269 of the Revised Penal Code. Moreover, he was *arrested,* within the meaning of the same article.

Arrest is defined in the Revised Rules of Criminal Procedure as "the taking of a person into custody in order that he may be bound to answer for the commission of an offense."[73] It is "an actual restraint of a person to be arrested, or by his submission to the custody of the person making the arrest."[74]

However, jurisprudence instructs that there need not be an actual restraint for curtailment of liberty to be characterized as an "arrest."

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[73] RULES OF COURT, Rule 113, sec. 1.
[74] RULES OF COURT, Rule 113, sec. 2.

Babst v. National Intelligence Board[75] involved the National Intelligence Board's invitations to and subsequent interrogations of several journalists. There, this Court declared:

> The assailed proceedings have come to an end. The acts sought to be prohibited (i.e., the issuance of letters of invitation and subsequent interrogations) have therefore been abated, thereby rendering the petition moot and academic as regards the aforesaid matters.
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> Be that as it may, it is not idle to note that ordinarily, an invitation to attend a hearing and answer some questions, which the person invited may heed or refuse at his pleasure, is not illegal or constitutionally objectionable. Under certain circumstances, however, such an invitation can easily assume a different appearance. Thus, where the invitation comes from a powerful group composed predominantly of ranking military officers issued at a time when the country has just emerged from martial rule and when the suspension of the privilege of the writ of habeas corpus has not entirely been lifted, and the designated interrogation site is a military camp, the same can easily be taken, not as a strictly voluntary invitation which it purports to be, but as an authoritative command which one can only defy at his peril, especially where, as in the instant case, the invitation carries the ominous warning that "failure to appear . . . shall be considered as a waiver . . . and this Committee will be constrained to proceed in accordance with law." Fortunately, the NIB director general and chairman saw the wisdom of terminating the proceedings and the unwelcome interrogation.[76]

Similarly, in *Sanchez v. Demetriou,*[77] among the issues discussed was whether then Mayor Antonio L. Sanchez (Sanchez) was arrested. Commander Rex Piad of the Philippine National Police invited Sanchez to appear at Camp Vicente Lim for investigation. This Court explained what may be deemed an arrest:

> Application of actual force, manual touching of the body, physical restraint or a formal declaration of arrest is *not* required. It is enough that there be an intent on the part of one of the parties to arrest the other and an intent on the part of the other to submit, under the belief and impression that submission is necessary.[78] (Citation omitted)

Although denominated as requests, invitations from high-ranking officials to a hearing in a military camp were deemed arrests. This Court characterized them as authoritative commands which may not be reasonably expected to be defied.

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75 217 Phil. 302 (1984) [Per J. Plana, En Banc].
76 Id. at 311.
77 298 Phil. 421 (1993) [Per J. Cruz, En Banc].
78 Id. at 432.

When the accused is in an environment made hostile by the presence and actuations of law enforcers where it can be reasonably inferred that they had no choice except to willingly go with them, then there is an arrest. The subjective view of the accused will be relevant—which includes among others—their station in life and degree of education.

Intent to arrest by the arresting person or officer, whether through actual restraint or other means, must also be clearly established.[79]

In *People v. Milado,*[80] Rogelio P. Milado (Milado) was carrying bricks of marijuana in his backpack aboard a jeepney, on the way to Bontoc, Mountain Province. Acting upon an information that there was a person transporting marijuana in the jeepney, the police officers set up a checkpoint. In the checkpoint, the police identified Milado and told him to stay inside the jeepney. They subsequently brought him to the police station, where they ordered him to open his bag where the marijuana was kept. In order to determine whether or not there was a lawful search incidental to an arrest, this Court first resolved whether there was an arrest, and whether the arrest was lawfully made:

> [I]t cannot be denied that when the policemen saw appellant, and that he matched the description given to them by the asset, they were certain that he was the person they were looking for. It was based on this conclusion that appellant was brought to the police station. *Although no "formal arrest" had yet been made, it is clear that appellant had already been deprived of his liberty and taken into custody after the policemen told him to stay inside the jeepney and instructed the driver to drive them to the police station. The term "invited" may have been used by the police, but it was obviously a command coming from three law enforcers who appellant could hardly be expected to defy.*
>
> Thus, as a consequence of appellant's arrest, the policemen were authorized to look at the contents of the black bag, on the ground that a contemporaneous search of a person arrested[.][81] (Emphasis supplied)

Homar v. People[82] also involved the legality of a search incidental to a lawful arrest. Ongcoma Hadji Homar (Homar) was jaywalking when the police accosted him and directed him where to properly cross the street. However, they noticed that Homar was uneasy, searched him, and found in his possession a sachet of shabu. This Court ruled that there was no lawful arrest and reasoned as follows:

> Arrest is the taking of a person into custody in order that he or she may be bound to answer for the commission of an offense. It is effected by an actual restraint of the person to be arrested or by that person's voluntary

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79 *Homar v. People,* 768 Phil. 195, 208 (2015) [Per J. Brion, Second Division].
80 462 Phil. 411 (2003) [Per J. Azcuna, First Division].
81 Id. at 417.
82 768 Phil. 195 (2015) [Per J. Brion, Second Division].

> submission to the custody of the one making the arrest. Neither the application of actual force, manual touching of the body, or physical restraint, nor a formal declaration of arrest, is required. **It is enough that there be an intention on the part of one of the parties to arrest the other, and that there be an intent on the part of the other to submit, under the belief and impression that submission is necessary.**
>
> ....
>
> The indispensability of the intent to arrest an accused in a warrantless search incident to a lawful arrest was emphasized in *Luz vs. People of the Philippines*. The Court held that the shabu confiscated from the accused in that case was inadmissible as evidence when the police officer who flagged him for traffic violation had no intent to arrest him. According to the Court, due to the lack of intent to arrest, the subsequent search was unlawful. This is notwithstanding the fact that the accused, being caught in flagrante delicto for violating an ordinance, could have been therefore lawfully stopped or arrested by the apprehending officers.[83]

Petitioners' defense fails as it merely argues on semantics. However they opt to call it, it was evident that Pacis was taken into the barangay officials' custody based on their belief that he committed a crime, either because he was allegedly committing theft, or because he became violent. Their intent to arrest Pacis was clearly established.

In any case, these were undisputed and non-issues before the trial courts, as the Court of Appeals found:

> First, the records would reveal that the petitioners arrested the private complainant as this fact was ***admitted*** by both of them. Second, they arrested him ***for the purpose of bringing him to the proper authorities,*** in this case, the police station in Maribojoc, Bohol.[84] (Emphasis supplied)

II (A)

At this juncture, this Court is tasked to determine whether petitioners were authorized to arrest Pacis, and whether there was a reasonable ground to do so.

To recall, petitioner Duropan was a barangay kagawad, while petitioner Coloma was a barangay tanod of Lincod, Maribojoc, Bohol. A *barangay kagawad* is a member of the legislative council of the *sangguniang barangay,* which enacts laws of local application. He or she is a person in authority, per Section 388 of the Local Government Code. Meanwhile, a *barangay tanod* is deemed as an agent of persons in authority whose duties are described in Section 388 of the Local Government Code:

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83 Id. at 206–208.

84 *Rollo*, p. 28.

> SECTION 388. *Persons in Authority.* — For purposes of the Revised Penal Code, the *punong barangay*, ***sangguniang barangay* members**, and members of the *lupong tagapamayapa* in each *barangay* **shall be deemed as persons in authority in their jurisdictions**, while other barangay officials and members who may be designated by law or ordinance and *charged with the maintenance of public order, protection and security of life and property, or the maintenance of a desirable and balanced environment,* and any barangay member who comes to the aid of persons in authority, shall be deemed agents of persons in authority. (Emphasis supplied)

While deemed as persons in authority and agents of persons in authority, respectively, the *barangay kagawad* and *barangay tanod* are not the public officers whose official duty is to arrest or detain persons contemplated within the purview of Article 269 of the Revised Penal Code.

It is undisputed that Pacis' apprehension was not pursuant to an arrest warrant. Rule 113, Section 5 of the Revised Rules of Criminal Procedure enumerates instances when warrantless arrests are lawful:

> 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 just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances 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 is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

Manibog v. People[85] distinguished between the arresting officer's "probable cause to believe that the person to be arrested committed an offense[,]" leading to a warrantless arrest, and a reasonable suspicion that entails a "stop and frisk" search:

> For valid warrantless arrests under Section 5(a) and (b), the arresting officer must have personal knowledge of the offense. The difference is that under Section 5(a), the arresting officer must have personally witnessed the crime; meanwhile, under Section 5(b), the arresting officer must have had probable cause to believe that the person to be arrested committed an offense. Nonetheless, whether under Section 5(a) or (b), the lawful arrest generally precedes, or is substantially contemporaneous, with the search.

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[85] G.R. No. 211214, March 20, 2019, < http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65164> [Per J. Leonen, Third Division].

In direct contrast with warrantless searches incidental to a lawful arrest, stop and frisk searches are conducted to deter crime. *People v. Cogaed* underscored that they are necessary for law enforcement, though never at the expense of violating a citizen's right to privacy:

> "Stop and frisk" searches (sometimes referred to as Terry searches) are necessary for law enforcement. That is, law enforcers should be given the legal arsenal to prevent the commission of offenses. However, this should be balanced with the need to protect the privacy of citizens in accordance with Article III, Section 2 of the Constitution.
>
> The balance lies in the concept of "suspiciousness" present in the situation where the police officer finds himself or herself in. This may be undoubtedly based on the experience of the police officer. Experienced police officers have personal experience dealing with criminals and criminal behavior. Hence, they should have the ability to discern — based on facts that they themselves observe — whether an individual is acting in a suspicious manner. Clearly, a basic criterion would be that the police officer, with his or her personal knowledge, must observe the facts leading to the suspicion of an illicit act.

Posadas v. Court of Appeals saw this Court uphold the warrantless search and seizure done as a valid stop and frisk search. There, the accused's suspicious actions, coupled with his attempt to flee when the police officers introduced themselves to him, amounted to a reasonable suspicion that he was concealing something illegal in his buri bag. However, *Posadas* failed to elaborate on or describe what the police officers observed as the suspicious act that led them to search the accused's buri bag.

....

Manalili and *Solayao* upheld the warrantless searches conducted because "the police officers[,] using their senses[,] observed facts that led to the suspicion." Furthermore, the totality of the circumstances in each case provided sufficient and genuine reason for them to suspect that something illicit was afoot.

For a valid stop and frisk search, the arresting officer must have had personal knowledge of facts, which would engender a reasonable degree of suspicion of an illicit act. *Cogaed* emphasized that anything less than the arresting officer's personal observation of a suspicious circumstance as basis for the search is an infringement of the "basic right to security of one's person and effects."

Malacat instructed that for a stop and frisk search to be valid, mere suspicion is not enough; there should be a genuine reason, as determined by the police officer, to warrant a belief that the person searched was carrying a weapon. In short, the totality of circumstances should result in a genuine reason to justify a stop and frisk search.

In *Esquillo v. People,* the police officer approached and searched the accused after seeing her put a clear plastic sachet in her cigarette case and try to flee from him. This Court upheld the validity of the stop and frisk search conducted, since the police officer's experience led him to reasonably

suspect that the plastic sachet with white crystalline substance in the cigarette case was a dangerous drug.

In his dissent in *Esquillo*, however, then Associate Justice, now Chief Justice Lucas Bersamin (Chief Justice Bersamin) pointed out how the police officer admitted that only his curiosity upon seeing the accused put a plastic sachet in her cigarette case prompted him to approach her. This was despite not seeing what was in it, as he was standing three (3) meters away from her at that time. The dissent read:

> For purposes of a valid Terry stop-and-frisk search, the test for the existence of reasonable suspicion that a person is engaged in criminal activity is the totality of the circumstances, viewed through the eyes of a reasonable, prudent police officer. Yet, the totality of the circumstances described by PO1 Cruzin did not suffice to engender any reasonable suspicion in his mind. The petitioner's act, without more, was an innocuous movement, absolutely not one to give rise in the mind of an experienced officer to any belief that she had any weapon concealed about her, or that she was probably committing a crime in the presence of the officer. Neither should her act and the surrounding circumstances engender any reasonable suspicion on the part of the officer that a criminal activity was afoot. We should bear in mind that the Court has frequently struck down the arrest of individuals whose overt acts did not transgress the penal laws, or were wholly innocent. (Citation omitted)

Chief Justice Bersamin cautioned against warrantless searches based on just one (1) suspicious circumstance. There should have been "more than one seemingly innocent activity, which, taken together, warranted a reasonable inference of criminal activity" to uphold the validity of a stop and frisk search.

> *Accordingly, to sustain the validity of a stop and frisk search, the arresting officer should have personally observed two (2) or more suspicious circumstances, the totality of which would then create a reasonable inference of criminal activity to compel the arresting officer to investigate further.*[86] (Emphasis supplied, citations omitted)

Even granting that petitioners may have had the authority to inquire into the surrounding circumstances, and that what transpired was a stop and frisk search, petitioners failed to cite any suspicious circumstance that warranted Pacis' immediate arrest.

Petitioners argue that due to the numerous reports of stealing nipa leaves, it was reasonable for them to suspect that Pacis violated the law. This argument falls short in light of three (3) things: (1) they were aware that ALIMANGO existed, whose members were authorized to harvest nipa; (2) they personally knew Pacis; and (3) they were uncertain that Cabalit owns the land where they found Pacis and his group. We elaborate.

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[86] Id.

Upon hearing a reasonable explanation as to why Pacis was harvesting the nipa leaves, petitioners had no reason to suspect any wrongdoing. Petitioners knew Pacis and are familiar with ALIMANGO. Since it was easy to verify if he was indeed a member of the group, prudence dictated that they first investigate. Had it turned out that he was not a member and was indeed stealing from Cabalit, a warrant of arrest could have been obtained as they witnessed the commission of the crime.

In addition, they were uncertain that Pacis and his companions were harvesting on Cabalit's land. Petitioners admit that "there [were] no demarcation lines showing the exact boundaries"[87] of the two (2) plantations. Apart from Pacis mistakenly stating "association," instead of "organization," there was no apparent irregularity. There was no reason to believe Pacis and his group were breaking the law.

Petitioners invoke paragraph (a) to justify their warrantless arrest.[88] *People v. Cogaed*[89] requires compliance with the "overt act" test in *in flagrante delicto* arrests:

> [F]or a warrantless arrest of *in flagrante delicto* to be affected, two elements must concur: (1) 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 (2) such overt act is done in the presence or within the view of the arresting officer.[90] (Citations omitted)

"Failure to comply with the overt act test renders an *in flagrante delicto* arrest constitutionally infirm."[91] Both elements that justify an *in flagrante delicto* arrest were absent in this case.

In arguing that they had reasonable ground to arrest Pacis, petitioners contend that they believed in good faith that he was stealing nipa leaves from Cabalit's land. We are not convinced.

First, Pacis was merely cutting nipa leaves when petitioners came across him. This act by itself is not a crime.

Second, the group displayed no signs of suspicious behavior. The only overt act they saw Pacis and his companions do was harvesting nipa leaves from a plantation in plain view and in broad daylight.

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87 *Rollo*, p. 7.
88 Id. at 8.
89 740 Phil. 212 (2014) [Per J. Leonen, Third Division].
90 Id. at 238.
91 *Veridiano v. People*, 810 Phil. 642, 658 (2017) [Per J. Leonen, Second Division].

As the Court of Appeals explained:

> Petitioners' defense will not hold water in light of the fact that the nipa palms cut by the private complainant and his group belonged to an organization called [ALIMANGO], of which the private complainant and his group are duly registered members. As aptly pointed out by the [Regional Trial Court], the prudent act that should have been done by the petitioners, as barangay officials, was to conduct a thorough investigation on the reports of illegal cutting of mangroves or nipa leaves in the area rather than resorting to the drastic move of arresting the private complainant who had identified himself as a member of [ALIMANGO]. The decision of the [Municipal Circuit Trial Court] also correctly pointed out that if petitioners were doubtful of the private complainant's membership with [ALIMANGO], they should have required him to furnish the proper documents to prove his membership. The acts of petitioners in maliciously ignoring the claim of membership of the private complainant, arresting the latter without reasonable ground, and forcibly bringing the latter to the police station in Maribojoc, Bohol, sufficiently constitutes bad faith. All these factual circumstances are enough to rebut the presumption of good faith and regularity in the performance of official duties in petitioners' favor.[92]

There was no overt act within petitioners' plain view which hinted that Pacis was committing a crime. During his apprehension, Pacis has not committed, was not committing, nor was he about to commit a crime. The warrantless arrest in this case was unlawful.

III

As found by all three (3) tribunals, this Court affirms the ruling that petitioners are guilty of unlawful arrest under Article 269 of the Revised Penal Code.

There being no aggravating or mitigating circumstance, the penalty for unlawful arrest should be taken from the medium period of *arresto mayor,* which is two (2) months and (1) day to four (4) months. Contrary to the penalty imposed by the Municipal Circuit Trial Court, the Indeterminate Sentence Law finds no application in this case. It does not apply to "those whose maximum term of imprisonment does not exceed one year."[93]

Thus, the Regional Trial Court correctly modified the penalty of imprisonment to two (2) months and one (1) day, which is within the range of the imposable penalty, and affirmed the fine of ₱500.00 each. The Court of Appeals correctly modified it to state that the payment of the fine shall earn

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92 *Rollo,* p. 29.
93 Act No. 4225 (1935), sec. 2.

6% interest rate per annum commencing from the finality of the decision until fully paid.

We are not averse to the aggressive protection of our environment, especially of our diminishing mangroves. The zeal displayed by the accused as barangay officials to comply with their duties is, to some degree, commendable. However, there is a delicate line between zeal in enforcement and disregard for the fundamental rights of our citizens. Unfortunately, the accused clearly and unequivocally crossed that line.

Harvesting nipa indeed may be a leading cause for the deterioration of our mangroves. Both the offended parties and the accused however are fully aware that for many of our citizens in rural areas, the humble nipa is still the affordable option to build their shelters that will protect many of those who still live in poverty against the harsh realities of our steadily deteriorating climate conditions.

It is the poor who will harvest the nipa, not the rich.

Therefore, our laws and regulations are humane enough to grant licenses to some associations allowing them to harvest sustainably and always mindful of the carrying capacity of our shared ecology.

The accused should have been mindful of this reality. After all, they are from the same locality. Their restraint could have been an expressive gesture of social justice. As public officers, inquiry into their authority would have been sufficient. Accosting the offended parties was uncalled for under the circumstances. Justice is better served often by tempering it with mercy and a humble dose of common sense.

We affirm their conviction.

WHEREFORE, the Petition for Review on Certiorari is **DENIED**. The Court of Appeals October 23, 2015 Decision and February 1, 2017 Resolution in CA-G.R. CR No. 02182 are **AFFIRMED.**

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

ALEXANDER G. GESMUNDO
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

DIOSDADO M. PERALTA
Chief Justice

CERTIFIED TRUE COPY

MISAEL DOMINGO C. BATTUNG III
Division Clerk of Court
Third Division
OCT 13 2020