



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

SYRUS J. ALUZAN, JOSE
HENRY L. ARELLANO AND
FERDINAND M. LAVIN,

Petitioners,

- versus -

G.R. No. 249274

Present:

CAGUIOA, J., Chairperson,
INTING,
GAERLAN,
DIMAAMPAO, and
SINGH, JJ.

EDDIE FORTUNADO,
Respondent.

Promulgated:

August 30, 2023

X-----*MicDob-H*-----X

DECISION

INTING, J.:

This resolves the Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court seeking the review and reversal of the Decision² dated August 2, 2018, of the Court of Appeals (CA) in CA-G.R. SP No. 11272. The CA found Syrus J. Aluzan (Aluzan), Jose Henry L. Arellano (Arellano), and Ferdinand M. Lavin (Lavin) (collectively, petitioners) guilty of Simple Neglect of Duty.³ Likewise assailed is the CA Resolution⁴

¹ *Rollo*, pp. 3-26.

² Id. at 38-46. Penned by Associate Justice Edward B. Contreras and concurred in by Associate Justices Edgardo L. Delos Santos (now a former Member of the Court) and Dorothy P. Montejo-Gonzaga.

³ Id. at 45-46.

⁴ Id. at 36-37.

dated August 29, 2019, that denied petitioners' Motion for Reconsideration.⁵

The Antecedents

On September 11, 2014, Eddie Fortunado (Fortunado) filed a complaint⁶ for violation of Article 124 of the Revised Penal Code (RPC) for Arbitrary Detention and for Grave Misconduct before the Ombudsman against petitioners, namely: Lavin, who was the former Chief of the National Bureau of Investigation (NBI) of Bacolod City and now Regional Director of NBI Western Mindanao; Aluzan, who is a Special Investigator III; and Arellano, who is a Special Investigator II. Both Aluzan and Arellano are with the NBI Bacolod City.⁷

Fortunado alleged the following:

On June 27, 2012, at around 12:30 p.m., while he was waiting for Rolan Veraje in front of Southern College in Binalbangan, three men approached him and said, "*Ikaw ang nakabangga ng bata*" (You were the one who hit the child). The men then frisked him for a weapon, forcibly pushed him inside a car, and brought him to the NBI Bacolod City.⁸

At 3:30 p.m. of the same day, Philip B. Arles (Philip) and Francisco C. Britanico (Francisco) arrived at the NBI Bacolod City and asked him why he killed Judge Henry Arles (Judge Arles). When he denied any knowledge about the killing, Philip and Francisco tortured him to confess about the murder. Francisco shocked Fortunado with an electric wire and hit him with a PVC pipe in front of Aluzan and Arellano; both did nothing and merely watched the torture happen. While being recorded in a video, Philip and Francisco made Fortunado sign a document which they themselves prepared. They again electrocuted him for an hour. Francisco then forced Fortunado to write a letter addressed to Lavin stating that he was voluntarily surrendering to ask for protective custody from the NBI.⁹

The next day, Philip gave Fortunado a letter and directed him to familiarize himself with its contents. On July 3, 2012, Fortunado met Albert Arles (Albert), who asked him certain questions based on the same letter. Albert tortured Fortunado every time he gave a wrong answer.

⁵ Id. at 37.

⁶ CA rollo, pp. 64-65.

⁷ Rollo, p. 38.

⁸ Id. at 38-39. CA rollo, pp. 42-43.

⁹ Rollo, p. 39.

Thereafter, Fortunado was forced to sign a document admitting that he was hired to murder Judge Arles, even though it was not true.¹⁰

In the course of Fortunado's stay at the NBI Bacolod City, he asked for a lawyer of his choice, but his request was denied. Instead, Atty. Ana Maria Palermo (Atty. Palermo), who is Francisco's friend, was assigned to him as his counsel.¹¹

The NBI Bacolod City detained Fortunado, together with Alejandro Capunong (Capunong) and Jessie Daguia (Daguia), to answer for the murder of Judge Arles. The NBI agents told them that their respective families would remain safe if they would just do whatever they were told to do; and they would receive ₱20,000.00 as monthly salary under the Witness Protection Program. Because Fortunado was suffering from the torture, he agreed to all the terms and conditions given by Albert.¹²

Further, Fortunado alleged that Philip and Francisco knew that he owned a gun; both forced him to reveal its whereabouts. On July 8, 2012, he, together with Philip, Francisco, and some NBI agents, went to his house at *Barangay* Tampalon where they found and confiscated his gun.¹³

On July 11, 2012, the NBI Bacolod City transferred Fortunado to the NBI Manila where Albert, Philip, and Francisco always visited and threatened him. No one from Fortunado's family was allowed to visit him. This prompted Tessa Fortunado (Tessa), Fortunado's mother, to file a Petition for Writ of Amparo, docketed as SPEC. PROC. Case No. 12-2333, before Branch 42, Regional Trial Court (RTC), Bacolod City wherein she prayed for her son's release as well as an explanation regarding the cause of his detention, and the torture inflicted upon him.¹⁴

On December 26, 2012, the RTC rendered a Decision¹⁵ decreeing that the case did not fall within the sphere of the privilege of the Writ of Amparo. However, it directed the release of Fortunado after finding that there was no legal basis for his continued confinement.¹⁶

¹⁰ Id.

¹¹ Id.

¹² Id. at 39. *CA rollo*, p. 44.

¹³ *CA rollo*, p. 44.

¹⁴ Id.

¹⁵ Id. at 105-110. Penned by Judge Fernando R. Elumba.

¹⁶ Id. at 110.

Aluzan, on the other hand, contended that Fortunado, Capunong, and Daguia, were all positively identified by the witnesses as the perpetrators during the investigation of the murder of Judge Arles. He further alleged that: (1) Capunong and Daguia were earlier apprehended through separate entrapment operations for illegal possession of firearms by the NBI, while Fortunado voluntarily surrendered because he feared for his life and safety; (2) the NBI Bacolod City acquired custody over Fortunado, who voluntarily confessed before the media about his involvement in the murder of Judge Arles; (3) Fortunado, with the assistance of his counsel, Atty. Palermo, signified his intention to participate as a witness in the investigation of the murder of Judge Arles; thus, the NBI Bacolod City transferred him to the NBI Manila for his own safety; however, Fortunado recanted his confession and filed a Petition for Writ of Amparo which the RTC denied; (4) the Department of Justice (DOJ), upon finding of probable cause, filed an Information against Fortunado for the murder of Judge Arles; (5) Fortunado underwent a physical examination which showed that he had no injuries resulting from torture; (6) Fortunado was further examined by Dr. Voltaire G. Maniquis, Jr. of the Commission on Human Rights (CHR) who found no physical injuries on his body; (7) Philip and Francisco could not have tortured Fortunado because the latter was under a 24-hour surveillance by the NBI; and (8) the complaints for torture filed by Fortunado's counsel, Atty. Romeo S. Subaldo, on behalf of Capunong and Daguia, were dismissed for lack of merit.¹⁷

Meanwhile, in their respective counter-affidavits, Lavin and Arellano reiterated Aluzan's contentions.¹⁸

The Ruling of the Ombudsman in OMB-V-A-14-0428

In the Decision¹⁹ dated July 29, 2015, the Ombudsman found petitioners guilty of only Simple Misconduct and meted out against them the penalty of suspension of three months without pay.²⁰

The Ombudsman found that petitioners lawfully arrested Fortunado on June 27, 2012 without a warrant; when Fortunado surrendered the unlicensed firearm and ammunition, he was considered to have been

¹⁷ Id. at 45-46.

¹⁸ *Rollo*, p. 40.

¹⁹ *CA rollo*, pp. 42-55. Penned by Graft Investigation and Prosecution Officer I Katherine Arnoco Genovesa-Mahawan and approved by Deputy Ombudsman for the Visayas Paul Elmer M. Clemente.

²⁰ Id. at 54.

arrested *in flagrante delicto* for possessing them without authority.²¹ Moreover, the Ombudsman noted that: *first*, instead of subjecting Fortunado to an inquest proceeding, petitioners filed a regular complaint²² for Illegal Possession of Firearms only on August 7, 2012 before the Bacolod City Prosecutor's Office; and *second*, the Bacolod City Prosecutor's Office indicted Fortunado through a Resolution²³ dated December 21, 2012 for violation of Presidential Decree No. (PD) 1866, as amended by Republic Act No. (RA) 8294²⁴ and filed the corresponding Information²⁵ only on January 7, 2013.

According to the Ombudsman, it took petitioners six months to deliver Fortunado to the proper judicial authorities counted from June 27, 2012 up to the filing of the Information on January 7, 2013. As such, the Ombudsman concluded that Fortunado was detained for more than six months with no case filed against him,²⁶ *viz.*:

When an arresting officer detains any person for some legal ground, he must deliver such person to the proper judicial authorities within the period of: twelve (12) hours, for crimes or offenses punishable by light 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. Otherwise, they will be held liable for the Delay in the Delivery of Detained Persons to the Proper Judicial Authorities defined and penalized under Article 125 of the Revised Penal Code.

x x x x

Clearly, the detention of complainant was legal at the beginning because he was arrested *in flagrante delicto* for carrying an unlicensed firearm and live ammunitions. His detention became illegal, however, because respondents failed to deliver him to the proper judicial authorities within the period specified under Article 125 of the Revised Penal Code.

x x x x

²¹ Id. at 51.

²² Id. at 149-150.

²³ Id. at 152-157. Issued by Prosecutor II Ma. Theresa B. Ditching and approved by City Prosecutor Armando P. Abanado.

²⁴ Entitled "An Act Amending the Provisions of Presidential Decree No. 1866, As Amended, Entitled 'Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing In, Acquisition or Disposition of Firearms, Ammunition or Explosives or Instruments Used in the Manufacture of Firearms, Ammunition or Explosives, and Imposing Stiffer Penalties for Certain Violations Thereof, and For Relevant Purposes,'" approved on June 6, 1997.

²⁵ CA *rollo*, pp. 158-159.

²⁶ Id. at 52.

x x x In Grave Misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of established rule must be manifest. Otherwise, it is Simple Misconduct.

Since the elements of corruption, clear intent to violate the law or flagrant disregard of established rule are not manifest, they can only be held liable for Simple Misconduct with a penalty of Suspension of Three (3) Months without Pay since no mitigating or aggravating circumstances are present.²⁷ (Citations omitted)

Aggrieved, petitioners filed a petition for review before the CA.

The Ruling of the CA

On August 2, 2018, the CA rendered the assailed Decision²⁸ wherein it denied the petition but modified the Ombudsman's finding of Simple Misconduct to Simple Neglect of Duty.

The CA ruled as follows:

First, Fortunado's voluntary surrender did not give petitioners the license to detain him indefinitely. While such voluntary surrender may be likened to a waiver of Fortunado's rights under Article 125 of the RPC, his detention must still conform with the requirements under Section 7, Rule 112 of the Rules of Court on the prescribed period for preliminary investigation.²⁹

And *second*, the records showed that Fortunado was charged with the murder of Judge Arles only on November 19, 2012, or almost five months after he voluntarily surrendered to petitioners on June 27, 2012.³⁰ However, in the absence of any allegation or finding of wrongful intent on the part of petitioners in relation to Fortunado's five-month detention, they should only be held administratively liable for Simple Neglect of Duty for their error in judgment and not Simple Misconduct.³¹

Petitioners filed a motion for reconsideration, but the CA denied it for lack of merit in the assailed Resolution³² dated August 29, 2019.

²⁷ Id. at 51-54.

²⁸ *Rollo*, pp. 38-46.

²⁹ Id. at 42-44.

³⁰ Id. at 42.

³¹ Id. at 42-45.

³² Id. at 36-37.

Aggrieved, petitioners are now before the Court raising the following issues:

I.

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONERS WERE DETAINING THE RESPONDENT INDEFINITELY.

II.

THE HONORABLE COURT OF APPEALS ERRED IN FINDING PETITIONERS GUILTY OF SIMPLE NEGLIGENCE OF DUTY.

III.

THE HONORABLE COURT OF APPEALS ERRED IN CHARGING PETITIONERS WITH AN OFFENSE OTHER THAN WHAT THEY WERE SUMMONED TO ANSWER, IN VIOLATION OF THE BASIC TENETS OF DUE PROCESS.³³

Our Ruling

To recall, the present case stemmed from Fortunado's complaint for the following: Arbitrary Detention, defined and penalized under Article 124 of the RPC; violation of RA 9745, or the "Anti-Torture Act of 2001;" and Grave Misconduct against petitioners. The cases for Arbitrary Detention and torture were docketed as OMB-V-C-14-0577 and OMB-V-C-14-0578,³⁴ respectively; while the case for Grave Misconduct was docketed as OMB-V-A-14-0428.³⁵ The Ombudsman rendered separate Resolutions for the criminal and administrative liability of petitioners.

Hence, the present case appealing petitioners' administrative liability *via* a Rule 45 petition.

It is settled that the Court is not a trier of facts, and it is not the Court's function to examine, review, or evaluate the evidence all over again.³⁶ In petitions for review under Rule 45, the appellate jurisdiction of the Court is limited only to questions of law.³⁷ However, the general rule admits of exceptions,³⁸ such as in the case wherein the factual findings

³³ Id. at 12-13.

³⁴ CA *rollo*, pp. 300-314.

³⁵ Id. at 42-55.

³⁶ *Land Bank of the Philippines v. Quilit*, G.R. No. 194167, February 10, 2021, citing *Carbonell v. Carbonell-Mendes*, 762 Phil. 529, 536 (2015).

³⁷ Id.

³⁸ 1) When the findings are grounded entirely on speculation, surmises or conjectures; 2) when the inference made is manifestly mistaken, absurd or impossible; 3) when there is grave abuse of discretion; 4) when the judgment is based on a misapprehension of facts; 5) when the findings of

and conclusions of law of the Ombudsman and the CA are conflicting and contradictory.

Petitioners maintain that they did not indefinitely detain Fortunado considering that the latter voluntarily sought protective custody from the NBI for fear of his safety and security in view of his alleged participation in Judge Arles' murder. They stress that Fortunado's detention is legal from the beginning up until the end, and Article 125³⁹ of the RPC, as amended, is not applicable in the case.⁴⁰

Meanwhile, Fortunado denies that he voluntarily surrendered to petitioners and insists that the NBI agents abducted him on June 27, 2012.⁴¹

The records show that Fortunado *admitted* in his *Sinumpaang Salaysay*⁴² dated July 3, 2012 (first *Salaysay*) that he voluntarily surrendered to the NBI Bacolod City as he feared for his life and safety when two of his companions, who had information about the murder of Judge Arles, went missing.⁴³ It bears noting that Fortunado only recanted his statements in the first *Salaysay* on January 14, 2013, or more than six months following its execution, *after* he was charged with the illegal possession of firearms and live ammunition on January 7, 2013.

Moreover, in his *Sinumpaang Salaysay*⁴⁴ dated January 14, 2013 (second *Salaysay*), Fortunado averred that he only executed the first

facts are conflicting; 6) when in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; 7) when the findings are contrary to the trial court; 8) when the findings are conclusions without citation of specific evidence on which they are based; 9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; 10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and 11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. *Republic v. Martinez*, G.R. Nos. 224438-40, September 3, 2020, 949 SCRA 211, 220-221.

³⁹ Article 125 of the Revised Penal Code provides:

ART. 125. *Delay in the delivery of detained persons to the proper judicial authorities.* — The penalties provided in the next preceding article 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 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.

⁴⁰ *Rollo*, p. 43.

⁴¹ *Id.* at 171-172.

⁴² *CA rollo*, pp. 160-164.

⁴³ *Id.* at 163.

⁴⁴ *Id.* at 111-114.

Salaysay because he was subjected to torture while he was in the custody of the NBI Bacolod City. Not only is the timing of the second *Salaysay* highly suspect considering Fortunado's indictment and his mother Tessa's filing of a writ of amparo case⁴⁵ on his behalf, but also, there is simply no evidence to support his allegations of torture that supposedly made him sign the first *Salaysay*.

To stress, Fortunado failed to sufficiently establish that he was tortured in order to make him confess about the murder of Judge Arles. On the contrary, the medical certificate⁴⁶ issued by the NBI Medico-Legal Division – Manila showed that Fortunado suffered no injuries resulting from torture. More importantly, if Fortunado was truly tortured for a confession, the CHR agents who conducted a physical examination on him would have documented and reported the injuries he sustained because of it. Instead, Fortunado himself testified that the CHR agents simply did not come back after examining him for signs of torture.⁴⁷

It is settled that a notarized document enjoys the disputable presumption of regularity and carries the evidentiary weight conferred upon it as to its due execution.⁴⁸ Here, Fortunado failed to prove *by clear and convincing evidence*⁴⁹ that the first *Salaysay*, which was transcribed in his local vernacular and bore his countersigned, handwritten corrections, was not freely and validly executed.

Under the circumstances, the Court gives more weight to petitioners' defense that Fortunado voluntarily sought protective custody from the NBI Bacolod City in exchange for his statement about the murder of Judge Arles.

The question now is whether there is substantial evidence to hold petitioners administratively liable for their actions in relation to Fortunado's detention for six months without any criminal charges lodged against him.

After a careful study of the case, the Court rules in the *negative*.

Based on the records show that petitioners took custody of Fortunado on June 27, 2012, after he voluntarily surrendered himself to

⁴⁵ Id. at 67-69.

⁴⁶ Id. at 205.

⁴⁷ See TSN, Spec. Proc. No. 12-2333, August 22, 2012, id. at 93.

⁴⁸ *Tortona v. Gregorio*, 823 Phil. 980, 991 (2018).

⁴⁹ See id. at 991-992.

the NBI Bacolod City out of fear for his life and safety.⁵⁰ Fortunado thereafter remained in petitioners' custody for 14 days, or until July 11, 2012, when he was transferred to the NBI Manila due to security concerns.⁵¹ Then, on August 5, 2012, Fortunado's mother filed the writ of amparo case on his behalf before the RTC to secure his release from detention.⁵²

Notably, while Fortunado opted to put himself in the custody of the NBI Bacolod City in the beginning, the voluntary nature of his confinement evidently *changed* after he was transferred to the NBI Manila and petitioners forwarded a request for preliminary investigation against him for the murder of Judge Arles on July 27, 2012. This is easily evinced by the very filing of the writ of amparo case on Fortunado's behalf with the RTC shortly thereafter. Given that Fortunado was already in the custody of the NBI when said request for preliminary investigation was made without him having been arrested, the only logical explanation is that: *first*, he actually voluntarily surrendered to petitioners; and *second*, he remained in detention while awaiting the results of the preliminary investigation being conducted against him.

Thus, Fortunado's voluntary surrender to the NBI Bacolod City may be considered as an *implied waiver* of his rights under Article 125 of the RPC given that he placed himself under the protective custody of petitioners despite the lack of any criminal charges against him at the time.

It is true that under Section 2(e) of RA 7438,⁵³ a waiver of Article 125 must be *express*, meaning, it should be in writing and signed by the arrested or detained person in the presence of counsel. Nevertheless, the peculiar circumstances of the case at hand may be deemed as an *exception pro hac vice* to this rule considering that Fortunado himself sought protective custody from the NBI Bacolod City and he even voluntarily gave information regarding the murder of Judge Arles as stated in the first *Salaysay*. In other words, at the time of his voluntary surrender, Fortunado *chose* to be in the custody of the NBI Bacolod City for his own safety and security.

⁵⁰ CA *rollo*, p. 8.

⁵¹ Id. at 10.

⁵² Id. at 67.

⁵³ Entitled, "An Act Defining Certain Rights of Persons Arrested, Detained or Under Custodial Investigation as well as the Duties of the Arresting, Detaining and Investigating Officers, and Providing Penalties for Violations Thereof," approved on April 27, 1992.

However, as the Court explained in *IBP Pangasinan Legal Aid v. Department of Justice*,⁵⁴ such waiver of Article 125 must conform to the prescribed period for preliminary investigation under Section 7, Rule 112 of the Rules of Criminal Procedure, *viz.*:

The waiver of Article 125 of the RPC does not vest upon the DOJ, PPO, BJMP, and PNP the unbridled right to indefinitely incarcerate an arrested person and subject him to the whims and caprices of the reviewing prosecutor of the DOJ. The waiver of Article 125 must coincide with the prescribed period for preliminary investigation as mandated by Section 7, Rule 112 of the Rules of Court. Detention beyond this period violated the accused's constitutional right to liberty.

x x x x

Accordingly, the Court rules that *a detainee under such circumstances must be promptly released to avoid violation of the constitutional right to liberty, despite a waiver of Article 125, if the 15-day period (or the 30-day period in cases of violation of R.A. No. 9165) for the conduct of the preliminary investigation lapses.* This rule also applies in cases where the investigating prosecutor resolves to dismiss the case, even if such dismissal was appealed to the DOJ or made the subject of a motion for reconsideration, reinvestigation or automatic review. The reason is that such dismissal automatically results in a *prima facie* finding of lack of probable cause to file an information in court and to detain a person.⁵⁵ (Italics supplied)

Simply stated, detention beyond the 15-day period (or the 30-day period in cases of violation of RA 9165, as amended) for the conduct of preliminary investigation constitutes as a violation of the detainee's constitutional right to liberty even if he or she waived, or *is deemed to have impliedly waived*, his or her right under Article 125, as in the case.

Here, the records reveal that Fortunado was charged with the illegal possession of firearms and live ammunition under PD 1866, as amended by RA 8294, only on January 7, 2013 or *more than six months* after he voluntarily surrendered to petitioners on June 27, 2012.⁵⁶ Then, Fortunado was indicted for the murder of Judge Arles on June 3, 2013 in the Information⁵⁷ dated November 19, 2012.

That being said, it is important to point out that Fortunado was only in the custody of petitioners for 14 days. Given the circumstances, the Court cannot hold petitioners accountable for the *entire* duration of

⁵⁴ 814 Phil. 440 (2017).

⁵⁵ Id. at 456-458.

⁵⁶ CA *rollo*, p. 158.

⁵⁷ Id. at 221-223.

Fortunado's detention considering that custody over his person was *duly transferred* to the NBI Manila on July 11, 2012.⁵⁸ As such, when Fortunado was in the custody of petitioners, the 15-day period for the conduct of a preliminary investigation had not lapsed and at that point in time, his constitutional right to liberty had not yet been violated.

Indeed, the Court cannot sanction petitioners for something that they no longer had any control of. While petitioners were directly responsible for Fortunado's detention from June 27, 2012 up to July 11, 2012, what happened afterwards when he was turned over to the NBI Manila was clearly out of their hands.

This is not to say that petitioners are completely free of any administrative liability in the case.

Based on the records, it appears that petitioners only forwarded a request for preliminary investigation to the NBI Manila in relation to the killing of Judge Arles on July 27, 2012, or *30 days after Fortunado's voluntary surrender* to the NBI Bacolod City.⁵⁹

Moreover, when Fortunado was taken into the custody of the NBI Bacolod City, he also surrendered the following items to petitioners: (a) one Colt .45 caliber pistol with Serial No. 526393; (b) six pieces of .45 live ammunition; (c) one .45 caliber pistol magazine; and (d) cash in the total amount of ₱39,000.00.⁶⁰ Upon verification, it turned out that Fortunado did not have the license or the authority to possess said firearm and live ammunitions.⁶¹ Despite this, petitioners made the request for preliminary investigation to the Bacolod City Prosecutor's Office only on August 7, 2012, or *41 days after they confiscated the pistol and live ammunitions* from Fortunado.⁶²

By belatedly forwarding the requests for preliminary investigation to the appropriate offices, petitioners clearly failed to comply with the 15-day period provided under Section 7, Rule 112 of the Rules of Criminal Procedure for the conduct of a preliminary investigation for both criminal charges against Fortunado. Worse, the records are bereft of any plausible explanation pertaining to such *delay* in turning over the case to the investigating prosecutors for preliminary investigation.

⁵⁸ Id. at 44.

⁵⁹ Id. at 214-220.

⁶⁰ Id. at 146.

⁶¹ Id. at 148.

⁶² Id. at 149-150.

In *Siniclang v. Court of Appeals*,⁶³ the Court defined Simple Neglect of Duty as “the failure of an employee to give proper attention to a required task or to discharge a duty due to carelessness or indifference.”⁶⁴ The offense then becomes Gross Neglect of Duty when such omission of diligence resulted from the employee’s lack of even the slightest care, conscious indifference to the consequences, and/or flagrant and palpable breach of duty.⁶⁵

In the case, the failure of petitioners to promptly forward the subject requests for preliminary investigation to the investigating prosecutors is tantamount only to Simple Neglect of Duty *in the absence of bad faith* on their part. As the CA aptly noted, Fortunado neither alleged any wrongful intent against petitioners in his complaint nor proved it during the proceedings before the Ombudsman. To be sure, “[a]n act done in good faith, which constitutes only an error of judgment and for no ulterior motives and/or purposes, as in the present case, is merely Simple Negligence”⁶⁶ that is akin to Simple Neglect of Duty.

Under Section 50(D)(1), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS), Simple Neglect of Duty is classified as a less grave offense that is punishable by suspension from office for a period of one month and one day to six months for the first offense.

All things considered, the Court is constrained to affirm the CA Decision finding petitioners guilty of Simple Neglect of Duty and imposing upon them the penalty of suspension from office for a period of two months without pay.

As earlier discussed at length, petitioners are indeed administratively liable for Simple Neglect of Duty, *not* for Fortunado’s detention for more than six months without any criminal charges filed against him as the CA opined, but instead, for their failure to promptly forward the requests for preliminary investigation to the appropriate offices, in violation of the 15-day period provided under Section 7, Rule 112 of the Rules of Criminal Procedure for the conduct of a preliminary investigation against Fortunado.

⁶³ G.R. Nos. 234766, 239855, 247366, & 256013, October 18, 2022.

⁶⁴ *Id.*

⁶⁵ *Id.*

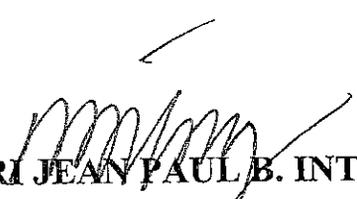
⁶⁶ *Daplas v. Department of Finance*, 808 Phil. 763, 774 (2017).

Though it is true that petitioners' actions contributed *in part* to Fortunado's detention for six months without a criminal charge, they should not bear the full accountability therefor. Indeed, the duty of petitioners in the investigation of the case *ended* when they forwarded, albeit belatedly, the requests for preliminary investigation to the investigating prosecutors. After all, from that point on, the conduct of the preliminary investigation as well as the filing of the criminal charges against Fortunado fell squarely on the investigating prosecutors' responsibility under Sections 2 and 4, Rule 112 of the Rules of Criminal Procedure.

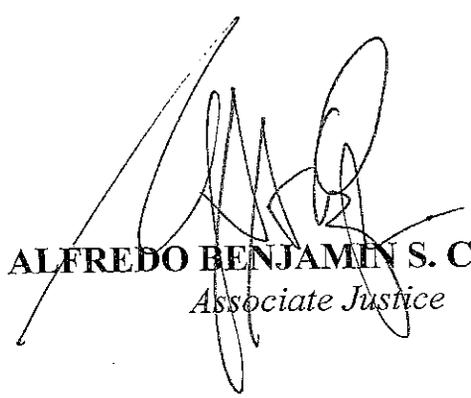
Finally, the penalty that the CA meted out against petitioners need not be modified as it is within the range allowed under the RRACCS.

WHEREFORE, the petition is **DENIED**. The Decision dated August 2, 2018 and the Resolution dated August 29, 2019 of the Court of Appeals in CA-G.R. SP No. 11272 are **AFFIRMED**.

SO ORDERED.


HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

See Dissent.


SAMUEL H. GAERLAN
Associate Justice

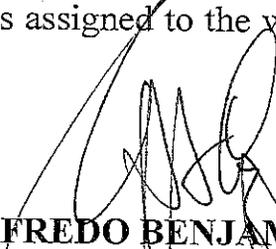

JAPAR B. DIMAAMPAO
Associate Justice

See Separate Concurring Opinion

MARIA FILOMENA D. SINGH
Associate Justice

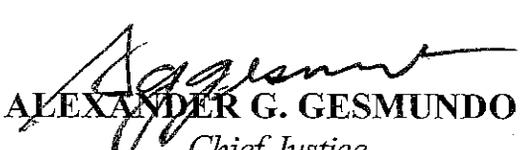
ATTESTATION

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.


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson, Third Division

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.


ALEXANDER G. GESMUNDO
Chief Justice

