



Republic of the Philippines
Supreme Court
Baguio City

EN BANC

IN THE MATTER OF THE G.R. No. 191805
PETITION FOR THE WRIT OF
AMPARO AND HABEAS DATA
IN FAVOR OF NORIEL
RODRIGUEZ,

NORIEL RODRIGUEZ,
Petitioner,

- versus -

GLORIA MACAPAGAL-
ARROYO, GEN. VICTOR S.
IBRADO, PDG JESUS AME
VERSOZA, LT. GEN. DELFIN
BANGIT, MAJ. GEN. NESTOR Z.
OCHOA, P/CSUPT. AMETO G.
TOLENTINO, P/SSUPT. JUDE W.
SANTOS, COL. REMIGIO M. DE
VERA, an officer named
MATUTINA, LT. COL. MINA,
CALOG, GEORGE PALACPAC
under the name "HARRY,"
ANTONIO CRUZ, ALDWIN
"BONG" PASICOLAN and
VINCENT CALLAGAN,
Respondents.

X -----X

**IN THE MATTER OF THE
PETITION FOR THE WRIT OF
AMPARO AND HABEAS DATA
IN FAVOR OF NORIEL
RODRIGUEZ,**

**POLICE DIR. GEN. JESUS A.
VERSOZA, P/SSUPT. JUDE W.
SANTOS, BGEN. REMEGIO M.
DE VERA, 1ST LT. RYAN S.
MATUTINA, LT. COL.
LAURENCE E. MINA, ANTONIO
C. CRUZ, ALDWIN C.
PASICOLAN and VICENTE A.
CALLAGAN,**

Petitioners,

- versus -

NORIEL H. RODRIGUEZ,

Respondent.

G.R. No. 193160

Present:

SERENO, *CJ*,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,
PERALTA,
BERSAMIN,
DEL CASTILLO,
ABAD,
VILLARAMA, JR.,
PEREZ,
MENDOZA,
REYES,
PERLAS-BERNABE, and
LEONEN, *JJ*.

Promulgated:

APRIL 16, 2013



X -----X

RESOLUTION

SERENO, *CJ*:

On 15 November 2011, the Court promulgated its Decision in the present case, the dispositive portion of which reads:

WHEREFORE, we resolve to GRANT the Petition for Partial Review in G.R. No. 191805 and DENY the Petition for Review in G.R. No. 193160. The Decision of the Court of Appeals is hereby AFFIRMED WITH MODIFICATION.

The case is dismissed with respect to respondents former President Gloria Macapagal-Arroyo, P/CSupt. Ameto G. Tolentino, and P/SSupt. Jude W. Santos, Calog, George Palacpac, Antonio Cruz, Aldwin Pasicolan and Vincent Callagan for lack of merit.

This Court directs the Office of the Ombudsman (Ombudsman) and the Department of Justice (DOJ) to take the appropriate action with respect to any possible liability or liabilities, within their respective legal competence, that may have been incurred by respondents Gen. Victor Ibrado, PDG. Jesus Verzosa, Lt. Gen. Delfin Bangit, Maj. Gen. Nestor Ochoa, Brig. Gen. Remegio De Vera, 1st Lt. Ryan Matutina, and Lt. Col. Laurence Mina. The Ombudsman and the DOJ are ordered to submit to this Court the results of their action within a period of six months from receipt of this Decision.

In the event that herein respondents no longer occupy their respective posts, the directives mandated in this Decision and in the Court of Appeals are enforceable against the incumbent officials holding the relevant positions. Failure to comply with the foregoing shall constitute contempt of court.

SO ORDERED.

After a careful examination of the records, the Court was convinced that the Court of Appeals correctly found sufficient evidence proving that the soldiers of the 17th Infantry Battalion, 5th Infantry Division of the military abducted petitioner Rodriguez on 6 September 2009, and detained and tortured him until 17 September 2009.

Pursuant to the Decision ordering the Office of the Ombudsman to take further action, Ombudsman Conchita Carpio Morales sent this Court a letter dated 23 May 2012, requesting an additional two-month period, or until 24 July 2012, within which to submit a report. The Ombudsman stated that Noriel Rodriguez (Rodriguez) and his family refused to cooperate with the investigation for security reasons.

On 6 January 2012, respondents filed their Motion for Reconsideration,¹ arguing that the soldiers belonging to the 17th Infantry Battalion, 5th Infantry Division of the military cannot be held accountable for authoring the abduction and torture of petitioner. Their arguments revolve solely on the claim that respondents were never specifically mentioned by name as having performed, permitted, condoned, authorized, or allowed the commission of any act or incurrance omission which would violate or threaten with violation the rights to life, liberty, and security of petitioner-respondent and his family.²

On 18 January 2013, the Ombudsman submitted the Investigation Report, as compliance with the Court's directive to take appropriate action with respect to possible liabilities respondents may have incurred. The exhaustive report detailed the steps taken by the Field Investigation Office (FIO) of the Office of the Ombudsman, concluding that no criminal, civil, or administrative liabilities may be imputed to the respondents. It was reflected therein that the lawyers for the Rodriguezes had manifested to the FIO that the latter are hesitant to appear before them for security reasons, *viz*:

Karapatan (a non-governmental organization that provides legal assistance to victims of human rights violations and their families) could not locate Noriel and Rodel. As of this writing, the Rodriguezes refused to participate in the present fact-finding investigation 'for security reasons.' Atty. Yambot disclosed (through a Manifestation dated March 30, 2012 that despite efforts to convince Noriel to participate in the present proceedings, the latter 'remains unconvinced and unwilling to this date.'

Recent information, however, revealed that Noriel and his family are no longer interested in participating in the present case.

¹ Rollo, pp. 567-594.

² Id. at 575.

Instead of appearing before this Office for a conference under oath, SPO1 Robert B. Molina submitted an Affidavit dated June 13, 2012 stating that on September 15, 2009, at around 11:00 o'clock in the morning, Wilma H. Rodriguez appeared before the Gonzaga Police Station and requested to enter into the blotter that her son, Noriel, was allegedly missing in Sitio Comunal, Gonzaga, Cagayan. Thereupon, he gathered information relative to Wilma's report "but the community residence failed to reveal anything".³

The other accounts – specifically that of respondent Antonino C. Cruz, Special Investigator II of the Commission on Human Rights (CHR), as well as the claims of respondents Mina and De Vera that they had disclosed to the CHR that Noriel had become an agent ("asset") of the 17th Infantry Battalion – have been thoroughly evaluated and ruled upon in our Decision. The OMB further laments, "If only he (Noriel) could be asked to verify the circumstances under which he executed these subsequent affidavits, his inconsistent claims will finally be settled," and that "(I)f there is one person who can attest on whether detention and torture were indeed committed by any of the Subjects herein, it is Noriel Rodriguez himself, the supposed victim."⁴

The purported unwillingness of the petitioner to appear or participate at this stage of the proceedings due to security reasons does not affect the rationale of the writ granted by the CA, as affirmed by this Court. In any case, the issue of the existence of criminal, civil, or administrative liability which may be imputed to the respondents is not the province of *amparo* proceedings -- rather, the writ serves both preventive and curative roles in addressing the problem of extrajudicial killings and enforced disappearances. It is preventive in that it breaks the expectation of impunity in the commission of these offenses, and it is curative in that it facilitates the subsequent punishment of perpetrators by inevitably leading to subsequent investigation and action.⁵ In this case then, the thrust of ensuring that investigations are conducted and the rights to life, liberty, and security of the petitioner, remains.

We deny the motion for reconsideration.

The writ of *amparo* partakes of a summary proceeding that requires only substantial evidence to make the appropriate interim and permanent reliefs available to the petitioner. As explained in the Decision, it is not an action to determine criminal guilt requiring proof beyond reasonable doubt, or liability for damages requiring preponderance of evidence, or even administrative responsibility requiring substantial evidence. The totality of evidence as a standard for the grant of the writ was correctly applied by this Court, as first laid down in *Razon v. Tagitis*:

³ P. 7, Investigation Report, CPL-C-11-2608.

⁴ Id. at p. 22.

⁵ *Secretary of National Defense v. Manalo*, G.R. No. 180906, 7 October 2008, 568 SCRA 1, 43.

The fair and proper rule, to our mind, is to *consider all the pieces of evidence adduced in their totality*, and to consider any evidence otherwise inadmissible under our usual rules to be admissible if it is consistent with the admissible evidence adduced. In other words, *we reduce our rules to the most basic test of reason* – i.e., to the *relevance of the evidence to the issue at hand and its consistency with all other pieces of adduced evidence*. Thus, even hearsay evidence can be admitted if it satisfies this basic minimum test.⁶ (Emphasis supplied.)

No reversible error may be attributed to the grant of the privilege of the writ by the CA, and the present motion for reconsideration raises no new issues that would convince us otherwise.

Respondents' claim that they were not competently identified as the soldiers who abducted and detained the petitioner, or that there was no mention of their names in the documentary evidence, is baseless. The CA rightly considered Rodriguez's *Sinumpaang Salaysay*⁷ as a meticulous and straightforward account of his horrific ordeal with the military, detailing the manner in which he was captured and maltreated on account of his suspected membership in the NPA.⁸

Petitioner narrated that at dawn on 9 September 2009, he noticed a soldier with the name tag "Matutina," who appeared to be an official because the other soldiers addressed him as "sir."⁹ He saw Matutina again at 11:00 p.m. on 15 September 2009, when his abductors took him to a military operation in the mountains. His narration of his suffering included an exhaustive description of his physical surroundings, personal circumstances, and perceived observations. He likewise positively identified respondents 1st Lt. Matutina and Lt. Col. Mina to be present during his abduction, detention and torture.¹⁰ These facts were further corroborated by Hermie Antonio Carlos in his *Sinumpaang Salaysay* dated 16 September 2009,¹¹ wherein he recounted in detail the circumstances surrounding the victim's capture.

Respondents' main contention in their Return of the Writ was correctly deemed illogical and contradictory by the CA. They claim that Rodriguez had complained of physical ailments due to activities in the CPP-NPA, yet nevertheless signified his desire to become a double-agent for the military. The CA stated:

In the Return of the Writ, respondent AFP members alleged that petitioner confided to his military handler, Cpl. Navarro, that petitioner could no longer stand the hardships he experienced in the wilderness, and that he wanted to become an ordinary citizen again because of the empty promises of the CPP-NPA. However, in the same Return, respondents state that petitioner agreed to become a double agent for the military and

⁶ G.R. No. 182498, 3 December 2009, 606 SCRA 598, 692.

⁷ dated 4 December 2009

⁸ CA *rollo* (G.R. No. 191805), pp. 14-23.

⁹ *Rollo*, (G.R. No. 191805), pp. 31-32, as cited in the Decision.

¹⁰ *Id.* at 17-23.

¹¹ *Id.* at 42.

wanted to re-enter the CPP-NPA, so that he could get information regarding the movement directly from the source. *If petitioner was tired of life in the wilderness and desired to become an ordinary citizen again, it defies logic that he would agree to become an undercover agent and work alongside soldiers in the mountains – or the wilderness he dreads – to locate the hideout of his alleged NPA comrades.*¹² (Emphasis supplied.)

Respondents conveniently neglect to address the findings of both the CA and this Court that aside from the abduction of Rodriguez, respondents, specifically 1st Lt. Matutina, had violated and threatened the former's right to security when they made a visual recording of his house, as well as the photos of his relatives. The CA found that the soldiers even went as far as taking videos of the photos of petitioner's relatives hung on the wall of the house, and the innermost portions of the house.¹³ There is no reasonable justification for this violation of the right to privacy and security of petitioner's abode, which strikes at the very heart and rationale of the Rule on the Writ of *Amparo*.

More importantly, respondents also neglect to address our ruling that *the failure to conduct a fair and effective investigation similarly amounted to a violation of, or threat to Rodriguez's rights to life, liberty, and security.*¹⁴ The writ's curative role is an acknowledgment that the violation of the right to life, liberty, and security may be caused not only by a public official's act, but also by his omission. Accountability may attach to respondents who are imputed with knowledge relating to the enforced disappearance and who carry the burden of disclosure; or *those who carry, but have failed to discharge, the burden of extraordinary diligence in the investigation* of the enforced disappearance.¹⁵ The duty to investigate must be undertaken in a serious manner and not as a mere formality preordained to be ineffective.¹⁶

The CA found that respondents Gen. Ibrado, PDG Verzosa, LT. Gen. Bangit, Maj. Gen. Ochoa, Col. De Vera, and Lt. Col. Mina conducted a perfunctory investigation which relied solely on the accounts of the military. Thus, the CA correctly held that the investigation was superficial, one-sided, and depended entirely on the report prepared by 1st Lt. Johnny Calub. No efforts were undertaken to solicit petitioner's version of the incident, and no witnesses were questioned regarding it.¹⁷ The CA also took into account the palpable lack of effort from respondent Versoza, as the chief of the Philippine National Police.

WHEREFORE, in view of the foregoing, the Motion for Reconsideration is hereby **DENIED** with **FINALITY**. Let a copy of this Resolution be furnished the Ombudsman for whatever appropriate action she may still take under circumstances.

¹² *Rollo* (G.R. No. 191805), pp. 63-64.

¹³ *Id.* at 67.


¹⁴ Page 35 of the Decision.

¹⁵ *Supra* note 3.

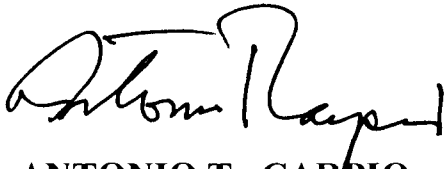
¹⁶ *Supra* note 5 at 42.


¹⁷ *Rollo* (G.R. No. 191805), pp. 66, 68

SO ORDERED.


MARIA LOURDES P. A. SERENO
Chief Justice

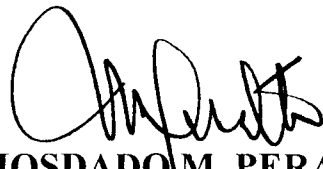
WE CONCUR:



ANTONIO T. CARPIO
Associate Justice


PRESBITERO J. VELASCO, JR.
Associate Justice



TERESITA J. LEONARDO-DE CASTRO
Associate Justice


ARTURO D. BRION
Associate Justice

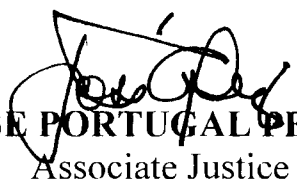

DIOSDADO M. PERALTA
Associate Justice


LUCAS P. BERSAMIN
Associate Justice



MARIANO C. DEL CASTILLO
Associate Justice


ROBERTO A. ABAD
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice


BIENVENIDO L. REYES
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice


MARVIC MARIO VICTOR F. LEONEN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



MARIA LOURDES P. A. SERENO
Chief Justice