

**NORA CONTADO, ADELINA RAZON AND NERA TIZON, PETITIONERS,
VS. RUFILO L. TAN, LILIO BORJA, EDEN BOCO, FELIPE ALDE, JR.,
DICKY CERNAL, PIO GOPOLE, JOSE ALDE, ROMEO ESCOTO, JORGE
SI...**

G.R. No. L-49299. April 15, 1988

Ponente: TEEHANKEE, C.J.

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TEEHANKEE, C.J.:

This is another tragic story of missing persons - desaparecidos - during the martial law regime that must be told and recorded in the annals of our jurisprudence for the lessons that should be learned from it and never be forgotten by a freedom-loving people.

This petition for habeas corpus was filed on November 20, 1978 by Nora Contado, Adelina Razon and Nena Tizon in behalf of their spouses Crispo Contado, Cesar Razon and Jimmy Tizon. The respondents are Rufilo L. Tan, the then Municipal Mayor of Llorente, Eastern Samar; Lilio Borja, Eden Boco, Felipe Alde, Jr., Dicky Cernal, Pio Gopole, Jose Alde, Romeo Escoto, Jorge Silla, Abraham Codoy, Privado Alido -- then members of the Integrated National Police of Llorente, Samar; Isaias Copada and Gonzalo Borja -- residents of Llorente, Eastern Samar, then government employees holding office at the municipal building of Llorente, Eastern Samar; Eufemio Bormate -- then driver of the ambulance car -- employee of the Llorente Community Hospital and Health Center (medicare) of Llorente, Eastern Samar; Roberto Tan, Jr. -- brother of then Mayor Rufilo Tan -- the head of the Llorente Community Hospital; Lt. Col. Benito Piccio, then Provincial Commander of the Philippine Constabulary/Integrated National Police at Camp Asidillo, Borongan, Eastern Samar and the soldiers were under his command.

Petitioners alleged that on September 13, 1978, their spouses were arrested by members of the Integrated National Police of Llorente, Eastern Samar, restrained of their liberty and were in grave danger of being liquidated, if they had not already been liquidated; that respondents conspired, helped one another and cooperated in arresting and detaining said Crispo Contado, Cesar Razon and Jimmy Tizon who were maltreated, tortured and subjected to cruel and inhuman punishment in the municipal building of Llorente, Eastern Samar; that the imprisonment of the above detainees or the restraint of their liberty, or their possible liquidation was without any legal authority or lawful basis. Petitioners further alleged that detainees were abused, maltreated, beaten and tortured by respondents led by then Mayor Rufilo Tan and his brother Roberto Tan, Jr. They had bloodied noses and mouths, broken teeth, black eyes, swollen ears, and blackish parts of their bodies. They were brought down from the second floor of the municipal building to the ground floor where the jail is located, totally naked - with nothing to cover their bodies, with the exception of Crispo Contado who had only a brief. They were ordered to drink urine. Their backs, hands and mouths showed cigarette burns. They were handcuffed at the back even as handkerchiefs were tied into their mouths. Respondents Eden Boco, Privado Alido and Felipe Alde, Jr. entered the detention cell to beat and maltreat the three by boxing and using karate chops on their mouths and bodies while the three were handcuffed and helpless. The three were not allowed to eat for several days. Their fellow detainees were ordered

not to give food to them. Even the relatives and friends of Crispo Contado, a native of Llorente, Eastern Samar, were prohibited to see him and bring him food. The petitioners further stated that per their information, their husbands were transferred from the Llorente Municipal Jail to the Philippine Constabulary Stockade at Borongan, Eastern Samar and back. They were also informed that on September 18, 1978 at 2:00 a.m. or 3:00 a.m., a very unholy hour, their husbands were taken out of the Llorente Municipal Jail aboard an ambulance car and brought to an undisclosed, unknown and secret place somewhere in Can-avid, or Oras, Eastern Samar. Such ambulance car of the Llorente Community Hospital and Health Center (medicare) was driven by respondent Eufemio Bormate upon instructions of Roberto Tan, Jr., the mayor's brother and was escorted by two jeeploads of PC soldiers. Petitioners expressed their fear that in such unknown, undisclosed and secret place, their husbands might have already been liquidated without mercy and justice.

On the same date that the petition was filed on November 20, 1978, we issued the writ requiring respondents to make a Return and to hear the petition on November 29, 1978. The respondents filed their separate returns^[1] which alleged in substance that they could not comply with the writ and present the persons of the detainees as they had been released on the very same day of their arrest, September 13, 1978 at 8:00 p.m.

After hearing the parties on November 29, 1978 the Court required counsels for respondents to file, if they wished, a proper return of the writ to counter the allegations in the petition and counsels for petitioners to file a reply or traverse to respondents' separate returns as well as to submit any document or affidavits specifically dealing with the factual issue of whether or not the three persons arrested on September 13, 1978 and whose whereabouts and release were sought in the petition at bar were indeed released on the same day at 8:00 p.m. as alleged in the returns.

In their separate amended returns,^[2] respondents denied the material allegations of the petition stating that they (respondents) merely invited the three missing persons for questioning and reiterated that they had been released on the same day on September 13, 1978 at 8:00 p.m. Respondents prayed that the petition be dismissed for being moot and academic.

Petitioners, in their reply to the separate amended returns,^[3] stated that the subject persons were never released on September 13, 1978 or on any day thereafter as shown by the affidavits of one Diosdado Camora and one Diomedes Bono (Annexes "A" and "B", Reply) who stated that they saw Crispo Contado, one of the detainees at the municipal jail of Llorente, Eastern Samar on September 14 and 15, 1978. Petitioners' counsel had interviewed and talked with respondent Lt. Col. Piccio who told him that he (Piccio) had recommended the release of the detainees two nights after or on September 15, 1978 contrary to respondents' claim that they released the subject persons on September 13, 1978. Petitioners averred that if their spouses had been truly released, they would have certainly gone home to them and their children. Petitioners further stated that respondents had not produced the bodies of the detainees, neither had they offered a valid excuse not to produce them and prayed that the respondents be adjudged guilty of contempt and be imprisoned and fined.

At the resumption of the hearing on December 1, 1978, the Court continued to interpellate respondents Piccio and Lilio Borja as well as Messrs. Diosdado Camora and Diomedes Bano who affirmed their statements in their affidavits (Annexes "A" and "B" reply) and resolved, among others, to direct the Chief, Philippine Constabulary thru Major Benito Y. Custodio to hold respondents Lt. Col. Piccio, Cpl. Lilio Borja and Benedicto (Dicky) Cernal in Metro Manila until further orders from the Court and to direct NBI Director Jolly Bugarin to take the alleged driver of the ambulance respondent Eufemio Bormate under protective custody and to conduct an investigation as to his alleged participation in spiriting away the three detainees to an undisclosed place. The three (3) respondents who were under PC custody were nevertheless allowed upon motion to be with their respective families during the holidays by then Chairman of the First Division, now the Chief Justice, in an order dated December 28, 1978

provided that they returned and were held back in Metro Manila from January 8, 1979 and thereafter.[4]

On December 11, 1978, respondent Eufemio Bormate filed a manifestation of waiver with motion to lift order of protective custody.[5] On December 13, 1978, the Director of the National Bureau of Investigation wrote the Court a letter stating that efforts exerted by agents of his office to locate and place under protective custody the person of Eufemio Bormate yielded negative results, as persons knowledgeable of his whereabouts were either hostile or uncooperative and transmitted a copy of the Agents' Report for the Court's information and proper action.[6]

On January 3, 1979, the Court Resolved among others to deny the prayer in the manifestation of waiver with motion to lift order of protective custody personally filed by respondent Eufemio Bormate with the assistance of his counsel and to require said counsel to explain why he should not be held in contempt of court or disciplinarily dealt with for obstructing the implementation of the Court's resolution of December 1, 1978 and the investigation therein ordered to be conducted as to Bormate's alleged participation in the alleged transporting and killing of the detainees subject of the petition at bar and to produce the person of Bormate before the NBI Director or agents-in-charge of the case, both within 5 days from notice hereof.[7] Said lawyer complied when he filed his explanation and compliance[8] and produced on January 12, 1979 at around 3:30 p.m. the person of Eufemio Bormate before NBI Director Jolly Bugarin and Agent Antonio A. Reyes.

Meanwhile, Administrative Case No. 78-33 for grave misconduct was filed against respondent Lilio Borja and Benedicto Cernal with the National Police Commission of the Ministry of National Defense,[9] the investigation of which was conducted by the Hearing Officer of the NAPOLCOM at its headquarters here in Metro Manila instead of in Camp Asedillo, Borongan, Eastern Samar.[10] On January 19, 1979, Assistant Commissioner Alfredo G. Pagulayan of the Inspection, Investigation and Intelligence Branch of the National Police Commission filed a letter stating that their office was directed by then Minister of National Defense Juan Ponce Enrile to conduct a thorough investigation on the alleged involvement of Mayor Rufilo Tan of Llorente, Eastern Samar and some members of the police station thereat in the mysterious disappearance of Crespo Contado, Jaime Tizon and Cesar Razon and requesting that an order be issued directing that Eufemio Bormate who was then under NBI custody be escorted and accompanied to their office for interrogation/interview.[11] This was granted in the resolution of January 19, 1979.[12] Respondent Cpl. Lilio Borja and Benedicto (Dicky) Cernal who were then under PC custody were also escorted/accompanied as requested to the Commission for interrogation/investigation at the scheduled dates and time.[13]

In the comment[14] filed by respondent Piccio on the declarations of Diomedes Bano and Diosdado Camora in open court of December 1, 1978, he stated that these two are not telling the truth. Said comment was adopted by respondents Lilio Borja and Benedicto Cernal.

On March 24, 1979, respondent Eufemio Bormate, thru counsel, filed a motion to lift order of protective custody.[15] The Court, acting on said motion, required the Director of the National Bureau of Investigation to comment on said motion and to submit a status report on its investigation.[16] In the same resolution, the Court also directed Major General Fidel V. Ramos, then Chief of the Philippine Constabulary and Director General, Integrated National Police and Brig. Gen. Antonio P. Uy, Commanding General, CIS to submit their report of the thorough investigation conducted by them as per their Return of November 29, 1978. In a letter dated April 10, 1979, the Director of the National Bureau of Investigation offered objection to Eufemio Bormate's motion on grounds of investigative necessity.[17] Attached to said letter are copies of their Agents' self-explanatory status reports dated 5 and 10 April, 1979 on the investigation conducted pursuant to the resolution of 1 December 1978. General Ramos and Brig. Gen. Antonio Uy, through Col. Santiago O. Tomelden, complied with said resolution when it submitted its initial report dated April 27, 1979.[18]

In the meantime, in the January 7, 1979 issue of the Times Journal, page 1[19] under the heading "Marcos sacks Eastern Samar town mayor" it was stated that then President Marcos has ordered the ouster of the mayor of Llorente, Eastern Samar, for his alleged participation in the unlawful arrest, arbitrary detention, maltreatment and disappearance of three Manila fish merchants three months ago.

On May 28, 1979, the Court Resolved among others to require Commissioner Alfredo Pagulayan of the NAPOLCOM to submit within ten (10) days from notice, a copy of the report to the NAPOLCOM as reported in the Philippines Daily Express issue of February 22, 1979, page 1 under the heading "Murdered Trader's Body Dug Up" carrying the by-line of Ros Manlangit stating that "the remains, said to be those of Manila businessman Jaime Tizon, were discovered in a remote area in barangay Calbang in Can-avid town, about 100 kilometers from Llorente, in the town where the three were held earlier by the police and further reporting that "Commissioner Alfredo Pagulayan of the NAPOLCOM said the grave digger (name withheld) admitted having buried Tizon's body on orders of certain persons.[20]"

In compliance with the above resolution, Commissioner Pagulayan stated that after digging the spot pointed to as the alleged grave, the team, unearthed what Dr. Marcial B. Adal, Municipal Health Officer of Can-avid certified as: part of the scalp hair; whitish substance with bad peculiar odor probably melted fatty tissues and cartiliges; blackish substances with a foul odor probably melted muscles substances and blood and pubic hair. The health officer was very certain that the remains found and mentioned above were parts and accessory of a human organism.[21]

Commissioner Pagulayan further stated that on January 12 and 13, 1979, the statements of the two grave diggers, Salvador Rebay and Peperion Hubayan, were taken down and they alleged in substance that sometime in the month of September or October, 1978, at Sitio Calbang, Barangay Carolina, Can-avid, Eastern Samar, after hearing a burst of gunfire, they were called by a group of unidentified soldiers and required to identify a person who had gunshot wounds in his body and lying dead. Having failed to ascertain the identity of the dead man, the two and some other persons who were around at the time were ordered by the said group of unidentified soldiers to dig up a hole and bury him; they obeyed. One Salvador Rebay further alleged that the male dead person had a mestizo feature.

He further stated that one Leo Rebay, one of the alleged grave diggers, gave his statement on January 24, 1979 and he substantially corroborated the statements of Salvador Rebay and Peperion Hubayan. When shown a line-up of photographs, Leo Rebay readily picked up the picture of one Jaime Tizon and pointed to it as that of the very person whom they buried in Sitio Calbang, Barangay Carolina, Can-avid, Eastern Samar sometime in the month of October 1978.

This report was noted in the resolution of June 22, 1979. On June 4, 1979, respondent Lt. Col. Benito D. Piccio filed an urgent ex-parte motion for permission to leave Metro Manila and go home to Cebu City to attend to his daughter who was then in the hospital.[22] This motion was granted in the resolution of June 6, 1979 provided he returned after ten days and reported back to the Chief of the Philippine Constabulary in accordance with the court's resolution of December 1, 1978.[23]

On December 19, 1979, Brig. Gen. Prospero A. Olivas then Acting Chief of Constabulary and Acting Director General of the Integrated National Police filed a letter[24] addressed to this Court on behalf of respondents Lt. Col. Piccio, Cpl. Lilio Borja and Pat. Benedicto (Dicky) Cernal who requested that their custody be transferred from the Chief of Philippine Constabulary through Major Benito Y. Custodio to the Regional Commander, PC Regional Command No. 8 and the restriction of their movement to Metro Manila be enlarged to include Camp September 21st, Leyte, where the Headquarters of PC Regional Command No. 8 is stationed. This request was

granted in the Resolution of January 14, 1980 and the Court also Resolved to Require the Chief of the P.C. and Director General, INP; National Police Commission, Ministry of National Defense; and the Director, NBI to submit their final reports of their respective investigations conducted on the disappearance of Crispo Contado, Cesar Razon and Jimmy Tizon.[25]

On January 11, 1980, respondent Lt. Col. Benito D. Piccio filed an urgent ex-parte motion for the Lifting of the order holding him in Metro Manila in order that he could seek preferential assignment in Region 7, with station in Cebu City, to enable him to resettle his family in Minglanilla before his retirement on May 30, 1980.[26] This was granted in the resolution of February 1, 1980.[27]

In the report of Santiago O. Tomelden, Colonel, JAGS (PC) GSC Constabulary Judge Advocate, for the Chief of Constabulary/Director General, Integrated National Police and the Commanding General, Criminal Investigation Service, Philippine Constabulary, he stated that the result of his investigation showed that there is no evidence which would warrant prosecution of any persons or at least pinpoint responsibility for the alleged disappearance of Crispo Contado, Jimmy Tizon and Cesar Razon.[28]

In the contrary investigation Report of the Inspection, Investigation and Intelligence Branch of the National Police Commission, Ministry of National Defense, thru Assistant Commissioner Alfredo G. Pagulayan, it was stated, however, that on the basis of its findings, it would appear that Mayor Rufilo Tan, Dr. Roberto Tan, Jr., Castolo Ocampo, Isaias Copada, Pat. Benedicto Cernal, Pat. Jose Alde, Pat. Privado Alido, Pat. Jorge Silla, Pat. Eden Boco and Pat. Romeo Escoto and PC Capt. Berting Casillana were probably liable for murder under Art. 248 of the Revised Penal Code; that the killing of Jimmy Tizon and his two other companions almost resulted in a perfect crime; that the precision in carrying out the plot was almost perfect; that the arrest, detention, maltreatment, the use of government personnels and equipments and the attempt to mislead government agents were only some of the circumstances that strengthened the suspicion that influential persons, military and/or civilians, were involved in the killing; and it recommended that all the suspects, namely Mayor Rufilo Tan, Dr. Roberto Tan, Castolo Ocampo, Isaias Copada, Pat. Benedicto Cernal, Pat. Jose Alde, Pat. Privado Alido, Pat. Jorge Silla, Pat. Eden Boco, and Pat. Romeo Escoto, who were positively identified by witnesses as responsible in connection with the illegal arrest, detention, maltreatment and killing of Jaime Tizon be arrested and detained; that PC Captain Berting Casillano of the PC Command in Can-avid, Eastern Samar who was identified by witnesses to be the Officer ordering the burial of Jaime Tizon in Sitio Carolina, Can-avid, Eastern Samar, be likewise arrested and detained; and that steps should be taken to assure the safety of witnesses.[29]

In the final report of the National Bureau of Investigation, it stated that the involvement of respondent Bormate in the instant case was established by evidence.[30]

On February 20, 1980, the Court resolved to furnish the Minister of Justice a copy of the aforesaid reports for the criminal prosecution of the officials and persons involved on the basis of the evidence collated by the National Police Commission and National Bureau of Investigation.[31]

On May 29, 1981, an amended information for murder was filed with the Sandiganbayan against the herein respondents, more specifically Criminal Case No. 2679 entitled "People of the Philippines vs. Rufilo L. Tan, et al."

On January 29, 1982, the First Division of the Sandiganbayan[32] rendered its decision in the aforesaid case wherein it found respondents Rufilo L. Tan, Dr. Roberto L. Tan, Jr., Lilio G. Borja, Benedicto A. Cernal, Isaias A. Copada and Castulo A. Campo guilty beyond reasonable doubt of the offense of Less Serious Physical Injuries. The remaining respondents were acquitted for insufficiency of evidence. The pertinent portion of the 72-page decision is hereunder reproduced:

"For any of the accused to be held liable for the death of Tizon in Can-Avid, it is, therefore, imperative and essential that conspiracy between them and those who killed Tizon be proven, which proof of conspiracy is quite separate and different from that which the prosecution has shown to have existed between and among those who participated in the maltreatment of Tizon and his companions. Unfortunately, the prosecution's evidence is bereft of such proof of conspiracy between those who liquidated Tizon in Can-Avid and the accused who are charged with having detained and maltreated him in Llorente. Even Bormate, whose participation in the transport of the three suspects to Can-Avid, and Escoto, who is claimed to have been present during the liquidation of Tizon, cannot be adjudged as co-conspirators in the latter's killing in the absence of any fact or circumstance that they performed any overt act in furtherance of such conspiracy to kill Tizon or to conceal his remains. For conspiracy to be adjudged against the accused herein, there should be proof of community of design, concert of mind, unity of purpose and execution, because mere knowledge, acquiescence or approval, even presence at the scene of the crime, is not enough to constitute one a party to a conspiracy.

Prescinding therefrom, the Court must, therefore, hold that none of the accused herein can be held liable, individually or collectively, for the death of Jimmy Tizon in Can-Avid. Liability for such a heinous crime, as well as for the liquidation of Cesar Razon and Crespo Contado, must be laid at the feet of other persons who were pointed to by the prosecution to have been led by one PC Sgt. Berting Casillano, acting presumably under orders of their superiors for purposes which are not reflected on the record and which should be ventilated in other appropriate proceedings. That the prosecution failed in its primary mission to secure the conviction of those who were responsible for Tizon's death need not be belabored, considering the legal restraints under which it proceeded, occasioned by the 'split jurisdiction' which resulted from the exclusion of military personnel in the filing of the instant charge, although their participation clearly appears from the facts gathered by the NAPOLCOM team during its investigation (Exhibits H-2 to H-182, inclusive).

"Accordingly, the exact nature of the liability of the accused herein, if any, must be reckoned only with respect to the incidents described and testified to by the prosecution witnesses as having occurred in the afternoon of September 13, 1978 inside the offices of Sub-Station Commander Lilio Borja and Mayor Rufilo Tan inside the municipal building of Llorente. As proven by the prosecution's evidence, Jimmy Tizon was picked-up, together with Cesar Razon, at Mamerta Cruz' carinderia at around 4:30 o'clock in the afternoon of September 13, 1978, by accused Patrolmen Abraham Codoy, Privado Alido and Eden Boco. They were brought by the latter to the municipal building, where they were joined later by Crespo Contado who was picked up at his uncle's house by accused Patrolmen Alido, Boco, Jose Alde and Gonzalo Borja. Tizon and his companions were then maltreated (third-degreed) inside the office of the station commander, after they were told by accused Pat. Benedicto Cernal to undress and face the wall. After questioning by Cernal as to the suspects' purpose in coming to Llorente resulted in their claims of a business trip, Cernal got angry and boxed Contado on the ribs, followed by a knee blow. Accused Dr. Roberto Tan, Jr. and Castulo Campo arrived and both of them rained continuous blows on the three suspects, including Tizon who rolled on the floor as a result of the beating.

"Accused Mayor Rufilo Tan then arrived with a gun and because his questions to the suspects did not satisfy him, fired a shot between Razon's thighs after which he ordered Pat. Alde, Cernal, Alido, Codoy and Jorge Silla to bring the suspects to his office located two doors away. Thereat, Mayor Tan resumed his questioning of the suspects and, because he did not like their answers, he struck the throats of Contado, Razon and Tizon with the tip of his fingers and stomped on them when they rolled on the ground. Dr. Tan, Jr., then came in, holding a piece of wood, 2 x 2 inches, together with Campo. Dr. Tan hit Contado on the left eye and body with the club, causing Contado's left eye to almost pop out, after which he administered the same beating on Tizon and Razon, causing Tizon to fall unconscious on the floor. All the while, despite Razon's pleas, Mayor Tan sat on his table smoking a cigarette, telling the suspects to tell the truth. Thereafter, accused Isaias Copada came in and also administered fist blows on Razon, Tizon and Contado.

"The foregoing proven facts indubitably reveal the existence of a conspiracy between several accused, namely, Mayor Tan, Station Commander Lilio Borja, Patrolmen Benedicto Cernal, Dr. Roberto Tan, Jr., Castulo Campo and Isaias Copada to maltreat Tizon and his companions. Such maltreatment had no other purpose than to compel said suspects to admit that they had come to Llorente for illegal or improper motives, overlooking the obvious and indubitable fact that said suspects had come to Llorente purposely for business and that even one of them is a native of said town. The above-named accused having acted in pursuance of a common purpose or objective, each doing a part so that their acts, though apparently independent, were in fact connected and cooperative thus indicating a closeness of personal association and a concurrence of sentiment, then the Court is justified in holding that they should be held liable as co-conspirators (People vs. Cabrera, 43 Phil. 65; People vs. Carbonnel, 48 Phil. 869, People vs. Caballero, 54 Phil. 585). The community of interest due to relationship, the absence of immediate and sufficient cause or provocation, the point of attack, and the obvious plan to deal separately with the complainant are facts and circumstances from which the unity of design that characterizes conspiracy can be inferred without need of direct proof (People vs. Co Unjieng, 61 Phil. 236), and it is enough that from the individual act of each accused, it may be reasonably deduced that they had a common plan to commit the felony (People vs. Catao, G.R. No. 9532, April 29, 1960). It is immaterial that the details of the common plan do not appear in evidence as it is enough that each accused pursued the same objective and achieved it through their collective acts (People vs. Mitra, No. LL-13339, June 30, 1960).

"While thus holding that the above-named accused are liable, collectively, for the maltreatment of Tizon, however, such liability cannot be made to fall under the provisions of Article 235 of the Revised Penal Code, since the offense described and penalized therein can only be committed upon persons actually confined in a penal establishment either as convicts or as detention prisoners. Under Article 235, it is essential that the maltreated prisoner be under the charge of the officer maltreating him and that the former has either been committed or actually placed in jail or in prison (People vs. Punzalan, 99 Phil. 259; People vs. Baring, 37 O.G. 1367; People vs. Oliva, 95 Phil. 962; People vs. Del Rosario, 110 Phil. 476).

"The liability, therefore, of said accused can only be made to fall under Article 265 of the Revised Penal Code, for Less Serious Physical Injuries, the evidence for the prosecution having clearly and satisfactorily shown that the victim herein, Jimmy Tizon, suffered physical injuries during his maltreatment September 13, 1978 while inside the offices of the station commander and the mayor, respectively, resulting in injuries to his forearms, his jaw, cheeks and throat. The nature of those injuries were testified to by prosecution witnesses Fidel Loste, Leo Rebay and Ponciano Geroy. Said injuries were still evident on the person of Tizon, as testified to by Geroy who declared that when he saw Tizon for the first time at the Can-Avid PC detachment camp in the third week of September, 1978, Tizon was limping and had a swollen jaw and swollen cheeks and could hardly swallow his food, while Rebay declared that when Tizon was buried in his grave, the forearms appeared broken when he raised the hands of Tizon over his breast preparatory to burial. Since the injuries were inflicted on September 13, 1978 and were still evident at the time Tizon was brought to the Can-Avid PC detachment on September 18, 1978 and also up to two weeks later or in the early part of October 1978, then the duration of said injuries is less than one month, hence, properly falling under Article 265 of said Code.

"While it may be contended that the victim was not presented to testify as to the fact of the infliction of injuries upon his person or that no physician was presented to testify on said injuries and the fact of incapacity for labor or the necessity of medical attendance for the period required under Article 265, yet, on the other hand, from the very nature and circumstances of the case, the prosecution cannot be legally required to submit such kind of evidence, considering that the victim had disappeared and had in fact been liquidated. Thus, the Court must have to rest on evidence of corpus delicti, or the fact of the commission of the offense, and on this point, the Court finds and holds that the evidence on record fully justifies and supports the fact of corpus delicti.

"x x x Consistent with the foregoing doctrines, this Court finds and holds, therefore, that the fact of infliction of the injuries on Tizon by the above-named accused has been proven by the prosecution in evidence, as well

as the nature of the wounds, the length or duration for said injuries to heal and, finally, the perpetrators of the offense, those fully establishing corpus delicti.

"Although the charge in the instant case is for Murder, a finding of guilt for the offense of Less Serious Physical Injuries is proper and in order, considering that the latter offense is necessarily included in the former inasmuch as the essential ingredients of Less Serious Physical Injuries constitute and form part of those constituting the offense of Murder (Rule 120, section 5). In the same manner, the accused may be convicted of Slight, Less Serious or Serious Physical Injuries in a prosecution for Homicide or Murder, inasmuch as the infliction of physical injuries could lead to any of the latter offense when carried to its utmost degree, despite the fact that an essential requisite of the crime of Homicide or Murder is intent to kill but which is not required in a conviction for physical injuries. Similarly, a person accused of Attempted or Frustrated Murder or Homicide, wherein intent to kill is alleged, may, as the case may be, be convicted of physical injuries only, thus connecting that there was no intent to kill, hence, the crime could not be elevated to the category of an attempt or frustration of such offenses of homicide or murder.

"Conformably, therefore, with the foregoing findings and conclusions, the liability of accused Rufilo Tan, Dr. Roberto Tan, Jr., Station Commander Lilio Borja, Patrolmen Benedicto Cernal, Isaias Copada and Castulo Campo for the crime of Less Serious Physical Injuries must be adjudged. Inasmuch as said accused are all public officers, and, in the commission of the offense charged, they acted with abuse of their public positions and, likewise, took advantage of their numerical superiority and/or superior strength in the infliction of these injuries on the victim, Jimmy Tizon, then perforce, the Court finds that said aggravating circumstances must be taken into account in the imposition of the corresponding penalty. The record, however, showing that said accused had voluntarily surrendered, then such mitigating circumstance should be considered in their favor. On the other hand, with respect to accused Gonzalo Borja, Eufemio Bormate and Patrolmen Abraham Codoy, Privado Alido, Jose Alde, Eden Boco, Jorge Silla, Pio Gopole, Felipe Alde, Jr. and Romeo Escoto, against whom the evidence is insufficient to warrant a finding of guilt, their acquittal must necessarily be adjudged.

"WHEREFORE, accused Rufilo Tan y Loste, Dr. Roberto Tan, Jr. y Loste, Lilio Boria y Grafil, Benedicto Cernal y Alde, Isaias Copada y Alde and Castulo Campo y Averia are hereby found GUILTY beyond reasonable doubt of the offense of Less Serious Physical Injuries, as defined and penalized under Article 265 of the Revised Penal Code, as co-principals thereof, and there being duly proven the aggravating circumstances of taking advantage of their official positions and superior strength, offset only by the mitigating circumstance of voluntary surrender, hereby sentences each of them to suffer a straight imprisonment of SIX (6) MONTHS of arresto mayor, to indemnify, jointly and severally the heirs of Jimmy Tizon in the amount of P1,500.00, representing moral damages, P1,500.00 as exemplary damages, and to pay the cost of this action proportionately.

"Accused, Gonzalo Borja y Grafil, Eufemio Bormate y Bade and Patrolmen Abraham Codoy y Conrada, Privado Alido y Avendano, Jose Alde y Codoy, Eden Boco y Bertos, Jorge Silla y Calzado, Pio Gopole y Albor, Felipe Alde, Jr. y Coritana and Romeo Escoto y Candido are hereby acquitted for insufficiency of evidence, with costs de oficio. The bail bonds posted for their provisional liberty are hereby cancelled and their bondsmen thereunder relieved of any further liability thereon."[33]

This decision of the Sandiganbayan became final and executory after this Court denied the convicted respondents' petitions for review in L-60592 entitled "Rufilo L. Tan vs. Sandiganbayan" and L-60701 entitled "Roberto L. Tan, Isaias A. Copada, Lilio G. Borja, Benedicto A. Cernal and Castulo A. Campo vs. Sandiganbayan" on October 21, 1982. Their motion for reconsideration of the resolution of October 21, 1982 was denied in the resolution of December 3, 1982 and entry of final judgment was made on January 7, 1983.

The Sandiganbayan decision, lenient as it was, proves beyond peradventure the falsity of the incredible claim by respondents in their returns and amended returns in the case at bar that they released the three detainees-victims

on the very same night of their arrest on September 13, 1978. They thereby flaunted the authority of this Court; brazenly perjured themselves in swearing to their false returns; failed to give respect due to justice and truth and created and placed obstacles to the administration of justice and prevented the resolution of this case with the promptness which its very nature required, involving as it did, the liberty and lives of the three victims.

Atty. Lutgardo B. Barbo, counsel for petitioners, merits the Court's commendation for his fearless and unrelenting pursuit of the cause of truth and justice for the tragic victims. He pleaded in his reply to the separate amended returns thus:

"a)

People do not just vanish into thin air. One, perhaps, may disappear without a trace, two, may do the same, but a group of three responsible married men with wives and small children anxiously waiting for them, is simply just too much. For this reason, petitioners have no other recourse but to go to court because they are convinced of the justness of their cause; they certainly are not the type of people, what with their limited education and financial resources, who will go to court merely to harass town officials of a faraway place, or maliciously annoy the whole provincial Philippine Constabulary/Integrated National Police Command of Eastern Samar.

"b)

Then there is also the unnatural behavior, if not dereliction of responsibility, of the town officials led by the mayor and the Sub-Station Commander who admitted before this Honorable Court that they did not inquire about the whereabouts of the three innocent men whom they wrongly suspected of being 'pirates' even after their wives arrived from Manila anxiously looking for their long missing husbands. One can only surmise that the said mayor and the sub-station commander know exactly what happened to the three innocent men."

He prayed that respondents be held and punished for contempt of court pursuant to the Court's power and authority to punish for contempt as an incident essential to the execution and maintenance of judicial authority.

It is beyond doubt the bounden duty of respondents having custody of a detained person to respect and obey a writ of habeas corpus issued by a court or judge having jurisdiction in the premises and properly served upon them, and every person who unlawfully disobey the Court's commands or unlawfully resists or counsels resistance to its execution is in contempt of court and may be summarily punished therefor. Disobedience to the writ may take the form of neglecting or refusing to produce the person whose presence is sought by the writ, of failing to make a return, of making a false or evasive return, or of refusing to obey the final order or judgment entered in the proceedings. What the Court held in the early case of *Villavicencio v. Lucban*[34] still holds true as ever: "When one is commanded to produce a certain person and does not do so, and does not offer a valid excuse, a court must vindicate its authority, adjudge the respondent to be guilty of contempt, and order him either imprisoned or fined."

A punishment of contempt in this case is called for in order to vindicate the dignity and integrity of the writ of habeas corpus and to impress upon the respondents and all others the serious consequences of disobedience or willful evasion of the great writ of liberty. It is likewise necessary to maintain the authority of the court and to vindicate its honor and dignity whenever it is outraged.

The Court herein exercises this power on a corrective and not a retaliatory or vindictive principle (though it could impose a heavier penalty and order respondents' imprisonment for a substantial period of time) and therefore finds respondents guilty of contempt of court and sentences each of them to pay a fine of One Thousand Pesos (P1,000.00) as hereinbelow ordered. But the respondents must face criminal charges for their perjured returns to the writ, as set forth hereinabove.

ACCORDINGLY, the Court, finding respondents guilty of contempt of court, sentences each of them to pay a fine of One Thousand Pesos (P1,000.00) payable within ten (10) days from notice or to suffer ten (10) days imprisonment should they fail to pay such fine within the aforesaid period.

The Court refers this case to the Secretary of Justice for the criminal prosecution of the respondents for perjury and other charges, including murder as may be warranted in the premises, and of other parties not herein impleaded led by then PC Sergeant Berting Casillano and pointed to by the prosecution as responsible for the death in Can-avid of Jimmy Tizon and the two other hapless victims Cesar Razon and Crespo Contado, as stated in the Sandiganbayan's decision of January 29, 1982 in Criminal Case No. 2679 thereof (*supra*, pp. 15-17).

This decision is immediately executory.[**]

SO ORDERED.

Yap, Fernan, Narvasa, Melencio-Herrera, Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, and Cortes, JJ., concur.

Griño- Aquino, J., did not take part in the deliberation.

Gutierrez, Jr., J., on leave.

[1] Pages 34-53 and 117-131, Rollo.

[2] Pages 64-95, Rollo.

[3] Pages 96-116, Rollo.

[4] Page 180, Rollo; the case had been assigned to the First Division, then composed of Teehankee, J., chairman, and Felix V. Makasiar, Guillermo S. Santos (who was designated to sit in the First Division), Ramon C. Fernandez and Juvenal K. Guerrero, JJ., members.

[5] Pages 184-187, Rollo.

[6] Pages 188-191, Rollo.

[7] Page 201, Rollo.

[8] Pages 229-238, Rollo.

[9] Page 219, Rollo.

[10] Pages 223 and 270, Rollo.

[11] Page 239, Rollo.

[12] Page 241, Rollo.

[13] Pages 256-257, Rollo.

[14] Pages 206-217, Rollo.

[15] Pages 277-280, Rollo.

[16] Page 281, Rollo.

[17] Pages 283-292, Rollo.

[18] Pages 294-361, Rollo.

[19] Page 366, Rollo.

[20] Page 367, Rollo.

[21] See Folder attached to Rollo, marked "Napolcom Report".

[22] Pages 373-375, Rollo.

[23] Page 400, Rollo.

[24] Pages 418-425, Rollo.

[25] Page 426, Rollo.

[26] Pages 428-431, Rollo.

[27] Page 447, Rollo.

[28] Pages 448-456, Rollo.

[29] Pages 457-491, Rollo.

[30] Pages 432-446, Rollo.

[31] Page 492, Rollo.

[32] Pamaran, PJ, Escareal, J. ponente, and Molina, J.

[33] Pages 61-72 of the decision found on pp. 112-123 of the Record of G.R. No. 60592 of the Court.

[34] 39 Phil. 778 (1919)

[**] In immediately executory decisions, no extension of time to file motion for reconsideration shall be granted.

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