

ELI LUI AND LEO ROJAS, PETITIONERS, VS. SPOUSES EULOGIO AND PAULINA MATILLANO, RESPONDENTS.*G.R. No. 141176. May 27, 2004*

Ponente: CALLEJO, SR., J.

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This is a petition for review on certiorari of the Decision[1] of the Court of Appeals in CA-G.R. CV No. 44768 which reversed and set aside the decision of the Regional Trial Court of Bansalan, Davao del Sur, Branch 21.[2]

The Antecedents

Sometime in September 1987, then seventeen-year-old Elenito Lariosa visited his aunt, his father's older sister, Paulina Lariosa Matillano, at Lily Street, Poblacion Bansalan, Davao del Sur. On May 2, 1988, Lariosa was employed as a laborer at the Davao United Products Enterprise store, with a monthly salary of P800.00. The store was owned by Leong Shiu Ben and King Kiao and was located at the corner of Monteverde and Gempesaw Streets, Davao City. Lariosa was tasked to close the store during lunchtime and after store hours in the afternoon. Ben himself opened the store in the mornings and after lunchtime. Adjacent to the said store was another store owned by Kiao's son, Eli Lui, who also happened to be Ben's nephew. Aside from Lariosa, Ben and Kiao employed Maximo Pagsa and Rene Malang.

Lariosa chose to live in the house of Kiao. Lariosa fed the dogs of his employer every morning before going to work and in the afternoon, in exchange for free meals and lodging. There were occasions when Lariosa stayed in the house of Pagsa and Malang and left some of his things with them. Lariosa deposited his savings with the Mindanao Savings Bank in Bansalan.

On October 17, 1988, Lariosa was taken ill and was permitted to take the day off. He went to the house of his aunt, Paulina Matillano, and her husband Eulogio Matillano in Bansalan City, where he rested until the next day, October 18, 1988. Lariosa reported for work the day after, or on October 19, 1988, but Kiao told him that his employment was terminated. Lariosa was not paid his salary for the month of October. Kiao warned Lariosa not to report the matter to the Department of Labor. Lariosa decided to return to Bansalan without retrieving his things from Kiao's house.

On October 27, 1988, Lariosa returned to Davao City and was able to collect his backwages from Ben in the amount of P500.00. Lariosa withdrew his savings from the Mindanao Savings Bank in Bansalan City and on November 1, 1988, applied for a job at his cousin's place, at Quimpo Boulevard, Davao City. He bought a radio cassette for P2,500.00 and a pair of Rayban sunglasses for P900.00.

On November 3, 1988, Lariosa went to the house of his fiancée, Nancy, at New Matina, Davao City, but returned to Bansalan on the same day. On November 4, 1988, he returned to Nancy's house and stayed there until the next day, November 5, 1988.

That day, Ben informed his nephew, Eli Lui, that he had lost P45,000.00 in cash at the store. Ben reported the

matter to NBI Senior Agent Ruperto Galvez, and forthwith executed an affidavit wherein he alleged that after Lariosa's employment was terminated on October 19, 1988, he discovered that he had lost P45,000.00 in cash. He suspected that Lariosa was the culprit because the latter, as a former employee, had a duplicate key to the side door of the United Products Enterprise Store.

At 9:00 a.m. on November 6, 1988, a Sunday, Lariosa went to the house of Pagsa and Malang to retrieve his things. The two invited Lariosa to go with them to the beach, and when Lariosa agreed, they borrowed Lui's Ford Fierra for their transportation. The vehicle stopped at the Almendras Hall where Pagsa alighted on the pretext that he was going to buy fish. Lariosa, Rene, and his wife remained in the Fierra. Pagsa contacted Lui and informed the latter that Lariosa was with him.

After about an hour, Lui arrived on board a vehicle. With him were Pagsa and two others, Alan Mendoza and Henry Tan. Lui told Lariosa that he wanted to talk, and asked the latter to go with him. Pagsa urged Lariosa to go along with Lui. Lariosa agreed and boarded Lui's vehicle. The car stopped in front of Lui's house, where the latter alighted and went inside, while his companions and Lariosa remained in the car. When Lui returned, he was armed with a 9 mm. caliber gun and poked Lariosa with the weapon. He warned Lariosa not to run, otherwise, he would be killed. The group went to Ben's house to get the keys to the store. Ben joined them as they drove towards the store.

Lui mauled Lariosa and tried to force the latter to admit that he had stolen Ben's money. Lariosa refused to do so. Lui then brought Lariosa to the comfort room of the store and pushed his face into the toilet bowl, in an attempt to force him into confessing to the crime. Lariosa still refused to admit to anything. Lui then made a telephone call to the Metrodiscom (PNP) based in Davao City.

Sgt. Alberto Genise of the Metrodiscom (PNP) issued Mission Order No. MRF-A-004-88 dated November 6, 1988, directing Pat. Leo Rojas "to follow up a theft case committed in Davao City from 12:30 p.m. to 5:00 p.m." Rojas was directed to coordinate with the nearest PNP headquarters and/or stations. He was authorized to carry his firearm for the mission. He then left the police station on board a police car and proceeded to the corner of Magsaysay and Gempesaw Streets.

In the meantime, a police car arrived at the store with two policemen on board. One of them handcuffed Lariosa at gunpoint and ordered him to open the store with the use of the keys. As Lariosa opened the lock as ordered, one of Lui's companions took his picture. Another picture was taken as Lariosa held the door knob to open the door. Lariosa was then boarded in the police car and brought to the corner of Magsaysay and Gempesaw Streets where he was transferred to the police car driven by Rojas. He was brought to the Metrodiscom headquarters. Lui once more mauled Lariosa, still trying to force the latter to confess that he stole P45,000.00 from his uncle and to reveal what he did with the money. When a policeman asked him where he slept the night before, Lariosa replied that he spent the night in the house of his girlfriend's parents at New Matina, Davao City. The policemen brought Lariosa there, where they asked Nancy if Lariosa had left anything while he slept thereat. Nancy replied that Lariosa had left a radio cassette and a pair of sunglasses. The policemen took these and brought Lariosa back to the Metrodiscom headquarters where Lui and his two companions were waiting.

Lui asked Lariosa where he stayed when he went to Bansalan, and Lariosa replied that he used to stay in the house of his aunt and uncle, the Spouses Matillano, in Lily Street, Poblacion Bansalan. Rojas and Lui then brought Lariosa, with his hands still handcuffed, to a car. Lui's companions, Alan Mendoza and Henry Tan boarded another car and proceeded to the Matillano residence.

Without prior coordination with the Bansalan PNP, Rojas, who was in civilian clothes, Lui, Tan and Mendoza arrived at the house of the Spouses Matillano at about 3:00 p.m, with the handcuffed Lariosa in tow. With

handguns drawn, they kicked the door to the kitchen and gained entry into the house. They then proceeded to the sala where they found Lariosa's aunt, Paulina Matillano. In the adjacent room were Julieta, Lariosa's sister, Paulina's daughter-in-law, Virginia, the latter's sister, Erlinda, and a seven-month-old baby. Paulina was shocked. Rojas told Paulina, "Mrs., we are authorities. We are here to get something." Paulina remonstrated, "Why are you meddling (manghilabot)?"

Lui poked his gun at Paulina and warned her not to talk anymore because something might happen. He then said, "All right, where is your aparador because we are getting something." Paulina told Lui to wait for her husband Eulogio. Lui ignored her protest and told her that they were in a hurry. Paulina was then impelled to bring Lui and his two companions, Mendoza and Tan, to the second floor where her aparador was located. Rojas and the handcuffed Lariosa remained in the sala. Lui and his two companions then took two mats and two pairs of ladies' shoes belonging to Paulina and Eulogio, two pairs of pants, leather shoes, two t-shirts and two polo shirts which belonged to the latter's children. They also ordered Paulina to open a chest and when she did, Lui and his companions took her old Bulova wristwatch, necklace, ring and old coins. Lui and his two companions then went down to the ground floor. When Julieta went out of the room, one of Lui's companions recognized her as Lariosa's sister. Lui and his companions brought her along with them as they left the house.

Paulina was so unnerved by the incident. Her vision blurred, her stomach ached and she was on the verge of losing consciousness. Concerned, Erlinda massaged Paulina's stomach. However, Erlinda had to leave because she was worried about her mother. Paulina then went to the kitchen, prepared hot water and put a soothing ointment on her stomach to relieve the pain.

In the meantime, Lui and his companions proceeded to the Bansalan Police Station and caused an entry in the police blotter at 3:20 p.m. that he had recovered the following items from the Matillano residence -- one pair of colored blue pants valued at P89.00; one floor mat costing P290.00; a pair of black ladies' shoes worth P126.00; and another pair of ladies' shoes worth P69.00.

At 4:30 p.m., Paulina reported to the barangay captain that persons identifying themselves as policemen had gained entry into their house and took the following: two polo shirts; two t-shirts; two pairs of pants; two floor mats; two pairs of ladies shoes; one Bulova wristwatch; one necklace; one ring; and old coins.[3]

At 7:35 p.m., Eulogio Matillano made an entry in the Bansalan police blotter that earlier that day, at 4:00 p.m., Rojas took the following from his house: two polo shirts; two t-shirts; 2 pairs of pants; two floor mats; two pairs of ladies' shoes; 1 Bulova wristwatch; 1 necklace; one ring; and, old coins, without his and his wife's consent and without a search warrant.[4] In the meantime, Doroteo Barawan, officer-in-charge of the Office of the Barangay Captain, filed a complaint against Kim Kiao, et al., based on the complaint of Paulina, docketed as Barangay Case No. 168.[5]

On November 8, 1988, Lariosa executed an uncounselled confession where he stated that he stole P40,000.00 on October 15, 1988 from the Davao United Products, and that he used part of the money to buy appliances, a Sony cassette tape-recorder, two pairs of ladies' shoes, a Seiko wristwatch, two pairs of maong pants, Rayban sunglasses and floor mats.[6]

On November 16, 1988, an Information was filed in the Regional Trial Court of Davao City, charging Lariosa with robbery with force upon things. The case was docketed as Criminal Case No. 17,136,88.[7] The trial court rendered judgment on June 14, 1989, acquitting Lariosa of the crime charged on reasonable doubt. The trial court held that Lui procured Lariosa's confession through force and intimidation, in connivance with police authorities.[8] The trial court, likewise, found that Lui had an ulterior motive for charging Lariosa of robbery:

What would have been the possible motive of complainant in putting the burden of this charged against the

accused despite want of any appreciable evidence, can be gathered in the record, as indicating the fear of complainant, that the accused will file a complaint against him in the Department of Labor for illegally dismissing him in his employment, without any sufficient legal grounds and basis. This unfounded complaint was intended to support complainant's ground against any possible complaint, the accused might file against him with the Department of Labor by way of anticipation.[9]

On motion of Lariosa, the trial court ordered the return of the following exhibits:

Accordingly and conformably with the judgment of this court dated June 14, 1989, one Eulogio Matillano, accused's uncle, is hereby allowed to get or to retrieve exhibits "H," "I," "J," "K," "L," and "M," consisting of Sony Cassette with serial no. W3658; Rayban sunglasses; two (2) bundles of floor mat; two (2) pairs of pants; two (2) pairs of ladies' shoes; and Seiko Actus wristwatch.[10]

Meanwhile, Paulina Matillano filed a criminal complaint for robbery against Lui, Peter Doe, John Doe and Alan Mendoza. An Information was, thereafter, filed against them in the Municipal Circuit Trial Court of Bansalan, Davao del Sur, and the case was docketed as Criminal Case No. 880-B. On December 13, 1988, the court issued a warrant for the arrest of the accused therein. Upon reinvestigation, however, the Provincial Prosecutor issued a Resolution dated March 31, 1989, recommending that the case be dismissed for insufficiency of evidence, but that the charges be forwarded to the Judge Advocate General's Office for possible administrative sanctions against Rojas.

WHEREFORE, in view of the foregoing, it is respectfully recommended that the complaint against the respondents Eli Lui be dismissed for insufficiency of evidence. Considering that Pat. Leo Rojas is a member of the Integrated National Police, this office is without jurisdiction to entertain the complaint against him pursuant to Presidential Decree No. 1850. Therefore, let the complaint against Pat. Leo Rojas, together with its annexes, including a copy of the resolution of the undersigned, be forwarded to the Judge Advocate General's Office at Camp Catitipan, Davao City, for whatever action it may take.[11]

The complaint was docketed as Administrative Case No. 92-0020. The National Police Commission, thereafter, rendered a decision exonerating Rojas of administrative liability for the complainant's failure to substantiate the charges.[12] The Commission held that Rojas was merely complying with the mission order issued to him when he accompanied Lui and the latter's two companions to the Matillano residence.

In a Resolution dated August 25, 1989, then Secretary of Justice Silvestre H. Bello III dismissed the petition for review of the Provincial Prosecutor's resolution filed by Paulina Matillano. The Secretary of Justice, likewise, denied a motion for reconsideration thereon.

In a parallel development, Lariosa's parents, as well as Paulina Matillano, filed a complaint for robbery, violation of domicile, unlawful arrest and/or arbitrary detention against Leo Rojas, Eli Lui, et al., with the Commission of Human Rights docketed as CHR Case No. RFO No. 88-0207-DS. In a Resolution dated December 4, 1989, the Regional Office of the Commission recommended, thus:

WHEREFORE, premises considered, we are recommending that there is sufficient prima facie evidence:

- to indict Eli Lui for unlawful arrest as defined under Art. 369 of the Revised Penal Code, as amended; and
- to indict both Eli Lui and Pat. Leo Rojas liable for Violation of Domicile, as defined under Art. 128 of the same code.[13]

The Proceedings in the Trial Court

On January 11, 1990, the spouses Eulogio and Paulina Matillano filed a civil complaint for damages in the Regional Trial Court of Davao del Sur against Eli Lui, Leo Rojas, Alan Mendoza and Henry Tan. The case was

docketed as Civil Case No. G-XXI-47(90). The plaintiffs therein alleged the following:

- That plaintiffs are merchants by occupation and have been residing in Bansalan, Davao del Sur, for several years now. They are law-abiding and peaceful citizens in the community;
- That at about 3:00 o'clock in the afternoon of November 6, 1988, while plaintiff husband was away from his residential house at Lily St., Bansalan, Davao del Sur, and plaintiff wife was there tending the house, defendants, without any lawful search warrant, arrived and thru intimidation succeeded in searching the house owned by the plaintiff after which they brought with them two floor mats, two pairs of ladies shoes, two pairs of pants, two polo shirts, two T-shirts, one Relova wrist watch, one necklace (sinubong), one ring (sinubong) and several old coins, without the consent of the plaintiffs and without even giving any receipt for the items taken;
- That the defendants allegedly wanted to recover the items taken by one Elinito Lariosa but defendants thru the use of naked power and brute force, illegally searched the house of the herein plaintiffs in gross violation of plaintiffs' constitutional rights;
- That what defendants did in conspiring and confederating to illegally search the house of plaintiffs and then taking with them the items mentioned above without even the benefit of any receipt is not only violative of Article 19 in relation to Article 21 of the Civil Code but also of Article 32 of the Civil Code;
- That because of what defendants did, plaintiffs suffered mental anguishes, wounded feelings, deprivation of the properties taken, besmirched reputation, and fright for which reason defendants should be made to jointly and severally pay moral damages in the amount of P500,000.00;
- That in order to deter others similarly bent and minded and by way of example or correction for the public good, defendants should be made to pay jointly and severally exemplary damages in the amount of P300,000.00;
- That in the protection of their rights, plaintiffs engaged the services of counsel for an agreed attorney's fees equivalent to 25% of the total award plus per diem of P1,000.00 per court appearance;
- That plaintiffs are bound to incur litigation expenses in an amount not less than P10,000.00;[14]

They prayed that, after due proceedings, judgment be rendered in their favor, viz:

WHEREFORE, it is most respectfully prayed that after hearing judgment issue ordering the defendants to jointly and severally pay plaintiffs:

- P500,000.00 as moral damages;
- P300,000.00 as exemplary damages;
- Litigation expenses of P10,000.00;
- Attorney's fees equivalent to 25% of the total award;
- Per diems to be proved during the trial of this case.

Plaintiffs pray for other reliefs consistent with equity.[15]

In their Answer to the complaint, the defendants therein alleged, inter alia, that they did not conduct a search in the house of the plaintiffs and that plaintiff Paulina Matillano allowed them to enter the house and even brought out pairs of pants. They added that the other items were brought out by Lariosa's sister and that they took only one (1) floor mat, two (2) pairs of ladies' shoes, and one (1) pair of blue pants.[16]

The defendants adduced evidence that plaintiff Paulina Matillano allowed them to enter their house, and with

Lariosa's sister, voluntarily turned over the items declared in the complaint. They testified that no violence, threats or intimidation were even committed by them against Paulina Matillano. Defendant Rojas further testified that he was merely complying with the Mission Order issued to him when he entered the house of the plaintiffs in the company of the other defendants, and that he remained in the ground floor while the other defendants retrieved the goods from plaintiff Matillano in the second floor of the house.

On August 18, 1993, the RTC rendered judgment, ordering the dismissal of the complaint for plaintiffs' failure to prove their claims. The trial court also dismissed the defendants' counterclaims. The trial court gave credence to the collective testimonies of the defendants, that plaintiff Paulina Matillano voluntarily allowed them to enter her house, and that the latter voluntarily turned over the subject items to them. The trial court took into account the findings of the Provincial Prosecutor, the Secretary of Justice, the National Police Commission, as well as the order of the Municipal Circuit Trial Court of Bansalan, dismissing Criminal Case No. 880-B.

The Case on Appeal

The decision of the trial court was elevated to the Court of Appeals where the appellants contended, thus:

- THE LOWER COURT ERRED IN FINDING THAT APPELLANT PAULINA MATILLANO VOLUNTARILY ALLOWED APPELLEES TO ENTER THE HOUSE BECAUSE OF THE PRESENCE OF HER NEPHEW ELINITO LARIOSA WHO WAS HANDCUFFED;
- THE LOWER COURT ERRED IN FINDING THAT MRS. PAULINA MATILLANO WAS THE ONE WHO REPORTED THE MATTER TO THE BANSALAN POLICE STATION.
- THE LOWER COURT ERRED IN DISMISSING THE COMPLAINT DESPITE CLEAR PREPONDERANCE OF EVIDENCE AGAINST THE DEFENDANTS – APPELLEES.[17]

On April 22, 1999, the Court of Appeals rendered judgment reversing the decision of the RTC. The decretal portion of the decision reads:

IN VIEW OF ALL THE FOREGOING, the decision appealed from is hereby REVERSED and SET ASIDE and a new one entered ordering defendants-appellees jointly and severally:

- To pay plaintiffs-appellants the amount of Fifty Thousand Pesos (P50,000.00) as moral damages and Fifteen Thousand Pesos (P15,000.00) as exemplary damages; and
- Ten Thousand Pesos (P10,000.00), as attorney's fees; and
- To pay the costs.

SO ORDERED.[18]

The appellate court denied the appellees' motion for reconsideration of the said decision. The appellees Mendoza and Tan no longer appealed the decision.

Petitioners Eli Lui and Leo Rojas now assail the decision of the Court of Appeals contending that:

- THE HONORABLE COURT OF APPEALS DISREGARDED THE TIME-HONORED DOCTRINE LAID DOWN BY THIS HONORABLE COURT THAT FINDINGS OF TRIAL COURT ARE BINDING AND CONCLUSIVE AND DESERVE A HIGH DEGREE OF RESPECT, WHEN IT SET ASIDE THE FINDINGS OF FACTS AND ASSESSMENT OF THE REGIONAL TRIAL COURT THAT TRIED THE CASE;
- THE HONORABLE COURT OF APPEALS ERRONEOUSLY CONCLUDED THAT AN ILLEGAL SEARCH WAS CONDUCTED IN MRS. MATILLANO'S RESIDENCE, IN DISREGARD OF THE

EXCULPATORY FINDINGS OF THE TRIAL COURT THAT MRS. MATILLANO HAD VOLUNTARILY ALLOWED PETITIONERS ENTRY INTO HER HOUSE.[19]

The Issues

The issues in this case may be synthesized, thus: (a) whether or not respondent Paulina Matillano consented to the petitioners' entry into her house, as well as to the taking of the clothes, shoes and pieces of jewelry owned by her and her family; (b) whether or not the petitioners are liable for damages to the respondents; and, (c) if so, the extent of the petitioners' liability to the respondents.

Considering that the assignments of errors are interrelated, this Court shall delve into and resolve them simultaneously.

The Court's Ruling

The petition has no merit.

Admittedly, the issues in the case at bar are factual. Under Rule 45 of the Rules of Court, only questions of law may be raised in this Court in a petition for review on certiorari. However, the rule admits of some exceptions, such as a case where the findings of facts of the trial court are substantially different from those of the appellate court, and the resolution of such issues are determinative of the outcome of the petition.[20]

The petitioners aver that the Court of Appeals committed a reversible error in discarding the factual findings of the trial court. Contrary to the disquisitions of the appellate court, the petitioners assert that the inconsistencies between the testimonies of Rojas and Lui are peripheral. Lui did not conduct any search in the second floor of the respondent's house and even if he did so, respondent Paulina Matillano waived her right against unreasonable search when she allowed the petitioners to enter. According to the petitioners, the respondents failed to prove that they forced their way into the house of the respondents, and that the facts and circumstances which the appellate court found the trial court to have overlooked are not, in fact, substantial enough to warrant a reversal of the factual findings of the court a quo. According to the petitioners, the appellate court failed to discern that the action filed by the respondents with the trial court was merely a leverage to the charge of robbery against Lariosa, the respondents' nephew.

On the other hand, the Court of Appeals gave credence and full probative weight to the evidence of the respondents. It stated in its decision that the trial court erred in giving credence and probative weight to the testimonies of the petitioners (the appellants therein). Moreover, the appellate court found that the trial court had overlooked facts and circumstances of substance, which, if considered, would have altered the court's decision. The appellate court gave weight to the findings of the trial court in Criminal Case No. 17,136,88.[21]

We agree with the Court of Appeals.

The evidence of the respondents show that the petitioners, Tan and Mendoza, guns drawn and with the handcuffed Lariosa in tow, kicked the kitchen door and barged into the house of the respondents. They proceeded to the sala where respondent Paulina Matillano was. Over her vehement protests, and because of petitioner Lui's warning that she might be harmed, respondent Paulina Matillano was forced to accompany the petitioner and his cohorts to the second floor of their house. The foregoing was testified to by respondent Paulina Matillano, thus:

ATTY. SUARIO:

Q

Mrs. Matillano, do you know the person of Eli Lui?

A

I know him.

Q

Why do you know Eli Lui?

A

Because he is from Bansalan.

Q

On November 6, 1988, where were you, Mrs. Matillano?

A

I was in our house.

Q

At about 3:00 o'clock in the afternoon of November 6, 1988, did you notice any unusual incident that took place in your house?

A

There was.

Q

What incident was that, Mrs. Matillano?

A

There were five (5) persons who suddenly went inside our house.

Q

Where did they enter?

A

They entered through the kitchen.

Q

Now, where were you when they entered suddenly in your house?

A

I was in our sala.

Q

Now, what did you do when you saw these five (5) persons entered (sic) your house?

A

I was afraid.

Q

Aside from fear, what did you do?

A

One of them suddenly said, "Mrs., we are authorities."

ATTY. TAN:

Not responsive to the question, Your Honor.

ATTY. SUARIO:

She is responding the question because my question is, "Aside from fear, what did you do?" and according to this witness, she was not able to do anything because one of those who entered...(not continued)

COURT:

I think the answer is not responsive. Just reform the question.

ATTY. SUARIO:

Q

What did these persons do when they entered your house?

A

One of them said, "Mrs., we are authorities. We are here to get something from your house."

Q

Do you know who this person was, this person who was talking that they were persons in authority?

A

That person when he first went to our house, I do not know him yet, but I know (sic) him later to be Leo Rojas.

Q

Why do you know him later to be Leo Rojas?

A

When the case was already being tried, he introduced himself as Leo Rojas.

Q

What was Leo Rojas wearing at that time?

A

He was in civilian clothes.

Q

Aside from Leo Rojas, who were the other persons who entered your house?

A

Aside from the two (2) persons whom I do not know, my nephew was also with them in the name of Elinito Lariosa.

Q

Who else, Mrs. Matillano?

A

Eli Lui.

...

ATTY. SUARIO:

At least, may we ask, Your Honor, that the word “manghilabot” be incorporated.

COURT:

So, the word is “interfering” or “meddling.” You record the word “manghilabot.”

ATTY. SUARIO:

Q

When you said “manghilabot,” what do you mean, Mrs. Matillano?

A

Yes, because they said that they are taking some of our things and I said why are they doing that (manghilabot)?

Q

When you said those remarks, what else happened?

A

It was Eli Lui who answered, “Mrs., do not answer anymore because something might happen.” (Basig madisgrasya).

ATTY. SUARIO:

“Madisgrasya,” Your Honor, is more than something.

ATTY. SUARIO:

Q

When you heard those words from Eli Lui, what else transpired?

A

He said, “All right, where is your aparador because we are getting something.” And I even told him that we should wait for my husband but they did not agree because they said they are in a hurry.

Q And after that, what else happened?

A I accompanied him upstairs.

Q You accompanied him upstairs, who are you referring to that you accompanied upstairs.

A Eli Lui and his other two (2) companions.

Q These two (2) companions whom you said you do not know their names?

A Yes, sir.[22]

...

ATTY. TAN:

Q

Now, you said on November 6, 1988, five (5) men suddenly entered your house. When you said suddenly, will you please describe how did they enter the house?

A They passed through the kitchen and suddenly appeared inside the house.

Q You mean to say that they did not knock at the door?

A They did not.

Q Who first entered the house among the five (5)?

A What I first saw was that they immediately converged in the sala and whom I recognized was Eli Lui and my nephew who was in handcuffs.

Q Was your door opened at that time?

A It was closed but it was not locked. It can be kicked open.

Q But you can open it without kicking the door?

A Yes, sir.

Q Now, you said that you were afraid, why were you afraid?

A Why would you not be afraid when they were armed?

Q Who were armed among the five (5)?

A All of them except the one who was in handcuffs.

Q You are very sure of that?

A I am very sure.[23]

Respondent Paulina Matillano, likewise, testified that petitioner Lui and his cohorts took her personal things, and those of her family's, from the second floor of the house:

Q

Now, while you and Eli Lui with two (2) other companions were upstairs, what happened upstairs?

A

Upon reaching upstairs, they immediately rolled the two (2) floor mats, the pair of leather shoes, 2 pairs of pants, two (2) polo-shirts. They also let me open the chest and when it was already open they rummaged through it and they got my old Bulova watch, my necklace, my ring and a coinsita, old gold coins.

Q When you said "coinsita," what is "coinsita"?

A Old coins.

Q After taking all of these things, what else happened?

A They went downstairs.[24]

...

Q

Now, you mentioned in this affidavit that several properties were taken from your house, do you confirm that there were two (2) polo-shirts that were taken?

A Yes.

Q And there were also two (2) floor mats?

A Yes, that is true.

Q One (1) Bulova wristwatch?

A Yes.

Q One (1) necklace?

A Yes.

Q Two (2) pairs of lady (sic) shoes?

A Yes.

Q Two (2) pairs of pants?

A Yes.

Q One (1) ring?

A Yes.

Q Who owns these two (2) pairs of lady's (sic) shoes?

A That was mine.

Q What were the color of the shoes?

A Black and dirty white (referring to the color of the rostrum).

Q Where did you buy that shoes?

A In Davao City.

Q What store in Davao City?

A NCCC.

Q What particular date when you bought that shoes?

A I think it was in the month of November.

Q 1988?

A 1988.

Q And who owns these two (2) polo-shirts?

A My children.

Q What are the names of your children?

A Allan and Danilo.

Q Where is Allan residing?

A During the incident, Allan was still schooling in Tacloban.

Q So, you mean to say, on November 6, 1988, he was no longer residing in Bansalan?

A No more.

Q How about Danilo, where was he residing in November 6, 1988?

A He was living in Sta. Cruz.

Q He has a family of his own at Sta. Cruz?

A He was still single then.

Q But he was residing in Sta. Cruz?

A Yes.

Q How about these two (2) pairs of pants, who owns these pants?

A My children also.

Q You are referring to Allan and Danilo?

A No, because I still have so many children.

Q So, who owns these two (2) pants?

A Also my children, Eulogio, Jr. and Allan.

Q Now, Eulogio, Jr. where is (sic) he residing on November 6, 1988?

A In our house.

Q How about these two (2) t-shirts?

A Also owned by my children.

Q Are you referring to Allan and Danilo?

A They used to wear that.

Q How come that Allan has a polo-shirt in your house when you said he was then residing in Tacloban?

ATTY. SUARIO:

May we manifest, Your Honor, that he was schooling in Tacloban.

COURT:

All right.

A They used to have a vacation during December and March and usually they left some of their clothes inside our aparador.

Q These polo shirts were still new?

A Already used.

Q How about the pants?

A The other one is already used and the other one is new.

Q How about the floor mats?

A That is mine.

Q Now, you claimed that these clothes were taken from the cabinet or aparador, is that correct?

A Yes, that is true.

Q Inside your aparador, how many pieces of clothes were stored therein?

A Many.

Q Could you say one (1) dozen?

A It cannot be counted.

Q Could you say three (3) dozens?

A It is really full of dress.

Q Would you say it is more than three (3) dozens?

A More.

Q And these more than three (3) dozens consists of polo shirts, t-shirts and pants?

A Yes.

Q

And inspite (sic) the fact that there were more than three (3) dozens of clothes, pants, polo shirts and t-shirts only these two (2) pants, two (2) polo shirts and two (2) t-shirts were taken?

A

Only those things because they only selected the ones which were still usable the good ones.

Q Now, you mentioned also in your affidavit that the group also searched your trunk?

A I was ordered to open the trunk.

Q Who particularly ordered you to open the trunk?

A Eli Lui.[25]

The respondents immediately reported the matter to the Office of the Barangay Captain[26] and filed a complaint against petitioner Lui and his cohorts.[27]

The petitioners' claim that respondent Paulina Matillano allowed them and their cohorts inside the house and voluntarily gave their personal belongings is belied by the unshaken testimony of respondent Paulina Matillano, corroborated by Erlinda Clarin.

The petitioners' attempt to project themselves to have acted with civility and courtesy to respondent Paulina Matillano is implausible, taking into account petitioner Lui's state of mind before he and petitioner Rojas and their cohorts left the Metrodiscom Headquarters in Davao City, and proceeded to the house of the respondents in Bansalan. Before they left Davao City, Lui sadistically mauled Lariosa with the acquiescence of the police authorities, and forced him to give an uncounselled extrajudicial confession. This was the finding of the RTC in Criminal Case No. 17,136,88:

Despite being mauled by Eli Lui and drowned in a toilet bowl, accused denied having anything to do with the lost money of the complainant. Later, he was turned over to the police for investigation and there without affording accused with his right to counsel, he was interrogated orally and was forced to admit that out of the money he stole, he bought items which the police later recovered at Bansalan. They also returned the accused to the complainant's establishment and forced to do re-enactment of the act of robbery, without accused again afforded the right to counsel. Pictures were taken during the re-enactment while accused was handcuffed, as

shown in the pictures taken by the police.

Finally, the accused was forced to admit and sign his extrajudicial statement (Exhibit A), no longer able to bear the pain of the mauling to him by Eli Lui, who has the temerity of maltreating the accused even in the presence of the guards in the jail and seriously threatening accused to admit ownership of the recovered items at Bansalan and at New Matina, SIR, Davao City, otherwise he will be salvaged, along with the serious threatening words of accused's companion in the jail, that if he will refuse to sign his alleged confession, he will be salvaged as directed by Eli Lui with the police.

Indeed, in the records, it can be deduced with sufficient basis, that Eli Lui seems to have an open hand in the prosecution of the accused. He was the one who called the police to arrest him, even without a warrant of arrest. Before his statement was obtained, policeman relied on him in the investigation and the filing of proper charges against accused. They rode in a car of Eli Lui, in taking accused from the Metrodiscom to the establishment of complainant during the re-enactment in going to Bansalan, to recover the items allegedly bought by accused out of the money allegedly stolen; all of these incidents shows the police despite justification, that they do not have enough facilities, gone astray in conducting an impartial investigation, by submitting to any possible indiscretion of Eli Lui of making the scale of justice bend in his favor, by manifesting control over the police power of investigation highly and seriously pre-judicial to the rights, and interests of the accused.[28]

If petitioner Lui was so brazen as to have mauled Lariosa in the presence of police authorities, he would not have cared a whit in barging into the respondents' house with petitioner Rojas, a policeman of Davao City, and his cohorts, and divesting the respondents of their belongings. The petitioners and their cohorts wanted to insure that their caper would succeed. Hence, they did not coordinate with the Bansalan Police Station when they went to the respondents' house with their intention to divest them of their belongings.

Petitioner Rojas' reliance on Mission Order No. MRF-A-004-98 issued to him by Sergeant Alberto Genise is misplaced. It bears stressing that the petitioner was merely tasked in the said order to "follow up a theft case within the area of responsibility of the Metrodiscom, Davao City." The petitioner was not authorized, under the said order, to commit or tolerate the commission of a crime, such as violation of domicile as defined in Article 128 of the Revised Penal Code, viz:

ART. 128. Violation of domicile— The penalty of prision correccional in its minimum period shall be imposed upon any public officer or employee who, not being authorized by judicial order, shall enter any dwelling against the will of the owner thereof, search papers or other effects found therein without the previous consent of such owner, or, having surreptitiously entered said dwelling, and being required to leave the premises, shall refuse to do so.

If the offense be committed in the nighttime, or if any papers or effects not constituting evidence of a crime be not returned immediately after the search made by the offender, the penalty shall be prision correccional in its medium and maximum periods.

Although petitioner Rojas did not follow petitioner Lui and his cohorts to the second floor of the respondents' house and himself conduct a search therein, he allowed them to search the premises without a warrant. The petitioners and their cohorts were not authorized to conduct a search in the house of the respondents, much less divest the latter of their personal belongings. As a police officer, it was petitioner Rojas' duty to prevent the commission of crimes in his presence, and to arrest the persons committing such crimes.

The trial court rejected the testimony of respondent Paulina Matillano on the following grounds: (a) she had known petitioner Lui for ten years as a businessman doing business in Bansalan; (b) the occupants of the respondents' house when the petitioners and their cohorts arrived were all women; (c) the respondents failed to

report the incident to the Bansalan police authorities; and, (d) the provincial prosecutor's resolution recommending the dismissal of Criminal Case No. 880-B for robbery against the petitioners, which was sustained by the Secretary of Justice, and the ruling of the National Police Commission exonerating petitioner Rojas from any liability.

We find that the Court of Appeals was correct in overruling the trial court.

First. Respondent Paulina Matillano testified that petitioner Lui did not stay permanently in Bansalan. He went there only to collect money from a certain Matura and other businessmen.[29] She also testified that there were many cases against the petitioner, one of which was for arson. The case was dismissed, but one of her neighbors was rendered missing.[30] If the petitioner, a businessman for ten years or so, had no qualms in torturing Lariosa under the very noses of police officers, he would, likewise, have no qualms about intimidating respondent Paulina Matillano and divesting her of her personal belongings. It must be stressed that petitioner Lui was in the company of petitioner Rojas, a police officer from Davao City.

Second. The petitioners and their cohorts had no foreknowledge that the occupants of the respondents' house were all women. They must have believed that there were male occupants; hence, barged into the house with drawn guns.

Third. As shown clearly in respondent Paulina Matillano's sworn statement before the Bansalan Police Station, she declared that the petitioners were armed with guns. They threatened her life and, without any search warrant therefor, divested her and her family of their personal belongings against their will.[31]

Fourth. In her complaint before the Office of the Barangay Captain, respondent Paulina Matillano declared that the petitioners entered their house, that petitioner Lui pointed a gun at her, and that the petitioners and their cohorts searched the house and carted away their personal belongings.[32] That the report made before the Barangay Captain and petitioner Paulina Matillano's sworn statement are not as complete as her testimony before the trial court is understandable. Affidavits are usually taken *ex parte* and are almost always incomplete and inaccurate, but they do not detract from the credibility of the witness.[33] An entry in the police blotter is usually incomplete and inaccurate for want of suggestions or inquiries, without the aid of which the victim may be unable to recall the connected collateral circumstances necessary for the correction of the first suggestion of his memory, and for his accurate recollection of all that pertain to the subject.[34] The same principle applies to entries in the barangay blotter.

Fifth. As correctly held by the trial court, the findings of administrative and quasi-administrative agencies are not binding on the courts. In the present case, the Office of the Provincial Prosecutor, as affirmed by the Secretary of Justice,[35] found no probable cause for robbery against the petitioners because they had no intent to rob, but merely to recover the properties from the house of the respondents which petitioner Lui perceived to have been acquired by Lariosa with money stolen from his uncle, Ben.[36] The decision of the National Police Commission absolving petitioner Rojas of grave misconduct was anchored on its finding that the petitioner was merely performing his duty as ordered by his superior officer.[37] It was inevitable for the City Prosecutor to dismiss the complaint for violation of domicile filed against petitioner Rojas in I.S. No. 91-1488 because the crime of violation of domicile was committed in Bansalan and not in Davao City.[38] In contrast, the Commission on Human Rights recommended the indictment of petitioner Lui for unlawful arrest and of petitioner Rojas for violation of domicile.[39]

Sixth. Under Articles 19 and 32, in relation to Article 21 of the New Civil Code, the dismissal of the complaint against the petitioners by the Provincial and City Prosecutors, the Municipal Trial Court and the National Police Commission are of no relevance to the civil complaint for damages filed by the respondents against the

petitioners. The action of the respondents against the petitioners may still proceed despite the dismissal of the criminal and administrative actions against them.

The petitioners' contention that respondent Paulina Matillano waived her right against unreasonable search and seizure deserves scant consideration. Under Article III, Section 2 of the Constitution, "the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable." This provision protects not only those who appear to be innocent but also those who appear to be guilty, who must nevertheless be presumed innocent until the contrary is proved.[40] The general rule is that a search and seizure must be carried through or with judicial warrant; otherwise, such a search and seizure becomes unconstitutional within the context of the constitutional provision[41] because a warrantless search is in derogation of a constitutional right. Peace officers who effect a warrantless search cannot invoke regularity in the performance of official functions.[42]

The right against unreasonable searches and seizures is a personal right which may be waived expressly or impliedly. But a waiver by implication cannot be presumed.[43] There must be clear and convincing evidence of an actual intention to relinquish the right to constitute a waiver of a constitutional right. There must be proof of the following: (a) that the right exists; (b) that the person involved had knowledge, either actual or constructive, of the existence of such right; and, (c) that the said person had an actual intention to relinquish the right.[44] The waiver must be made voluntarily, knowingly and intelligently. The Court indulges every reasonable presumption against any waiver of fundamental constitutional rights.[45] The fact that the aggrieved person did not object to the entry into her house by the police officers does not amount to a permission to make a search therein.[46] A peaceful submission to search and seizure is not a consent or an invitation thereto, but is merely a demonstration of regard for the supremacy of the law.[47]

In this case, the petitioners failed to prove, with clear and convincing evidence, that respondent Paulina Matillano waived her right against unreasonable search and seizure by consenting thereto, either expressly or impliedly. Admittedly, respondent Paulina Matillano did not object to the opening of her wooden closet and the taking of their personal properties. However, such failure to object or resist did not amount to an implied waiver of her right against unreasonable search and seizure. The petitioners were armed with handguns; petitioner Lui threatened and intimidated her. Respondent Eulogio Matillano, her husband, was out of the house when the petitioner and his cohorts conducted the search and seizure. He could, thus, not have waived his constitutional right.

Furthermore, the petitioners' claim that respondent Paulina Matillano voluntarily handed over the articles to petitioner Lui is incredible. There is no evidence that there was foreknowledge on the part of the petitioners of the articles they wanted to retrieve from the respondents' house. Even if respondent Paulina Matillano did hand over the articles to the petitioner, it was only because the petitioner and his cohorts had earlier threatened and intimidated her into doing so.

We agree with the ruling of the Court of Appeals that the petitioners are liable to the respondents for moral and exemplary damages in the amounts respectively awarded by it. Petitioner Rojas, a policeman of Davao City, conspired with petitioner Lui and, with drawn guns, gained entry into the respondents' house, and threatened and intimidated respondent Paulina Matillano. Although petitioner Rojas did not himself conduct the search, he assented thereto by allowing petitioner Lui and his cohorts to go up to the second floor and divest the respondents of their belongings. The petitioners even left together after the incident.

In *MHP Garments, Inc. vs. Court of Appeals*,[48] we had the occasion to state:

In the case of *Lim vs. Ponce de Leon*, we ruled for the recovery of damages for violation of constitutional rights and liberties from public officer or private individual, thus:

“ART. 32. Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages.

“xxx

“(9) the rights to be secure in one’s persons, house, papers and effects against unreasonable searches and seizures.

“xxx

“The indemnity shall include moral damages. Exemplary damages may also be adjudged.”

“ART 2219. Moral damages may be recovered in the following and analogous cases:

“xxx

“(6) Illegal search;

“(1) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

“Pursuant to the foregoing provisions, a person whose constitutional rights have been violated or impaired is entitled to actual and moral damages from the public officer or employee responsible therefor. In addition, exemplary damages may also be awarded.”

xxx

“The very nature of Article 32 is that the wrong may be civil or criminal. It is not necessary therefore that there should be malice or bad faith. To make such a requisite would defeat the main purpose of Article 32 which is the effective protection of individual rights. Public officials in the past have abused their powers on the pretext of justifiable motives or good faith in the performance of their duties. Precisely, the object of the Article is to put an end to official abuse by plea of the good faith. In the United States this remedy is in the nature of a tort.” (emphasis supplied)

In the subsequent case of *Aberca vs. Ver*, the Court En Banc explained the liability of persons indirectly responsible, viz:

“[T]he decisive factor in this case, in our view, is the language of Article 32. The law speaks of an officer or employee or person ‘directly or indirectly’ responsible for the violation of the constitutional rights and liberties of another. Thus, it is not the actor alone (i.e., the one directly responsible) who must answer for damages under Article 32; the person indirectly responsible has also to answer for the damages or injury caused to the aggrieved party.

xxx

“While it would certainly be too naïve to expect that violators of human rights would easily be deterred by the prospect of facing damage suits, it should nonetheless be made clear in no uncertain terms that Article 32 of the Civil Code makes the persons who are directly, as well as indirectly, responsible for the transgression joint tortfeasors.

xxx

[N]either can it be said that only those shown to have participated ‘directly’ should be held liable. Article 32 of the Civil Code encompasses within the ambit of its provisions those directly, as well as indirectly, responsible for its violations.” (emphasis supplied)

Applying the aforecited provisions and leading cases, the respondent court correctly granted damages to private respondents. Petitioners were indirectly involved in transgressing the right of private respondents against unreasonable search and seizure. Firstly, they instigated the raid pursuant to their covenant in the Memorandum Agreement to undertake the prosecution in court of all illegal sources of scouting supplies. As correctly observed by respondent court:

“Indeed, the acts committed by the PC soldiers of unlawfully seizing appellees’ (respondents’) merchandise and of filing the criminal complaint for unfair competition against appellees (respondents) were for the protection and benefit of appellant (petitioner) corporation. Such being the case, it is, thus, reasonably fair to infer from those acts that it was upon appellant (petitioner) corporation’s instance that the PC soldiers conducted the raid and effected the illegal seizure. These circumstances should answer the trial court’s query—posed in its decision now under consideration – as to why the PC soldiers immediately turned over the seized merchandise to appellant (petitioner) corporation.”

The raid was conducted with the active participation of their employee. Larry de Guzman did not lift a finger to stop the seizure of the boy and girl scout items. By standing by and apparently assenting thereto, he was liable to the same extent as the officers themselves. So with the petitioner corporation which even received for safekeeping the goods unreasonable seized by the PC raiding team and de Guzman, and refused to surrender them for quite a time despite the dismissal of its complaint for unfair competition.[49]

IN LIGHT OF ALL THE FOREGOING, the petition is DISMISSED. The Decision of the Court of Appeals is AFFIRMED in toto. Costs against the petitioners.

SO ORDERED.

Quisumbing, (Acting Chairman), Austria-Martinez, and Tinga, JJ., concur.
Puno, (Chairman), J., on official leave.

[1] Penned by Associate Justice Conrado M. Vasquez, Jr., with Associate Justices Cancio C. Garcia and Teodoro P. Regino, concurring.

[2] Penned by Judge Rodolfo A. Escovilla.

[3] Exhibit “A.”

[4] Exhibit “3.”

[5] Exhibit “B.”

[6] Exhibit “1.”

[7] Exhibit “E.”

[8] Exhibit “K.”

[9] Exhibit “K-25.”

[10] Exhibit “L.”

[11] Exhibit “10.”

[12] Exhibit “18.”

[13] Exhibit “N.”

[14] Records, pp. 1-3.

[15]Id. at 3.

[16]Id. at 12-13.

[17] CA Rollo, p. 20.

- [18] Rollo, p. 30.
- [19]Id. at 5.
- [20] Heirs of Tan Eng Kee vs. Court of Appeals, 341 SCRA 740 (2000).
- [21] Rollo, pp. 24-27.
- [22] TSN, 23 September 1991, pp. 5-10.
- [23]Id. at 20-21.
- [24]Id. at 10-11.
- [25] TSN, 3 December 1991, pp. 9-12.
- [26] Exhibit “A.”
- [27] Exhibit “B.”
- [28] Exhibit “K.”
- [29] TSN, 23 September 1991, p. 16.
- [30]Id. at 20.
- [31] Exhibit “4.”
- [32] Exhibit “B.”
- [33] People vs. Padilla, 213 SCRA 631 (1992).
- [34] People vs. Tabao, 240 SCRA 758 (1995).
- [35] Exhibit “13.”
- [36] Exhibit “10.”
- [37] Exhibit “18.”
- [38] Exhibit “20.”
- [39] Exhibit “H.”
- [40] MHP Garments, Inc. vs. Court of Appeals, 236 SCRA 227 (1994)
- [41] People vs. Barros, 231 SCRA 557 (1994).
- [42] People vs. Cubcubin, Jr., 360 SCRA 690 (2001).
- [43] Ibid.
- [44] Pasion Vda. de Garcia vs. Locsin, 65 Phil. 89 (1938).
- [45] People vs. Compacion, 361 SCRA 540 (2001).
- [46] Magoncia vs. Palacio, 80 Phil. 770 (1948).
- [47] Pasion Vda. de Garcia vs. Locsin, *supra*; People vs. Cubcubin, Jr., *supra*.
- [48] *Supra*.

[49]Id. at 234-236.

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