

**EDGARDO NAVIA, RUBEN DIO, AND ANDREW BUISING, PETITIONERS,
VS. VIRGINIA PARDICO, FOR AND IN BEHALF AND IN
REPRESENTATION OF BENHUR V. PARDICO RESPONDENT.***G.R. No. 184467. June 19, 2012*

Ponente: DEL CASTILLO, J.

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For the protective writ of amparo to issue in enforced disappearance cases, allegation and proof that the persons subject thereof are missing are not enough. It must also be shown by the required quantum of proof that their disappearance was carried out by, “or with the authorization, support or acquiescence of, [the government] or a political organization, followed by a refusal to acknowledge [the same or] give information on the fate or whereabouts of [said missing] persons.”[3]

This petition for review on certiorari[4] filed in relation to Section 19 of A.M. No. 07-9-12-SC[5] challenges the July 24, 2008 Decision[6] of the Regional Trial Court (RTC), Branch 20, Malolos City which granted the Petition for Writ of Amparo[7] filed by herein respondent against the petitioners.

Factual Antecedents

On March 31, 2008, at around 8:30 p.m., a vehicle of Asian Land Strategies Corporation[8] (Asian Land) arrived at the house of Lolita M. Lapore (Lolita) located at 7A Lot 9, Block 54, Grand Royale Subdivision, Barangay Lugam, Malolos City. The arrival of the vehicle awakened Lolita’s son, Enrique Lapore (Bong), and Benhur Pardico (Ben), who were then both staying in her house. When Lolita went out to investigate, she saw two uniformed guards disembarking from the vehicle. One of them immediately asked Lolita where they could find her son Bong. Before Lolita could answer, the guard saw Bong and told him that he and Ben should go with them to the security office of Asian Land because a complaint was lodged against them for theft of electric wires and lamps in the subdivision.[9]

Shortly thereafter, Bong, Lolita and Ben were in the office of the security department of Asian Land also located in Grand Royale Subdivision.[10] The supervisor of the security guards, petitioner Edgardo Navia (Navia), also arrived thereat.

As to what transpired next, the parties’ respective versions diverge.

Version of the Petitioners

Petitioners alleged that they invited Bong and Ben to their office because they received a report from a certain Mrs. Emphasis, a resident of Grand Royale Subdivision, that she saw Bong and Ben removing a lamp from a post in said subdivision.[11] The reported unauthorized taking of the lamp was relayed thru radio to petitioners Ruben Dio (Dio) and Andrew Busing (Busing), who both work as security guards at the Asian Land security department. Following their department’s standard operating procedure, Dio and Busing entered the report in their logbook and proceeded to the house of Mrs. Emphasis. It was there where Dio and Busing were able to

confirm who the suspects were. They thus repaired to the house of Lolita where Bong and Ben were staying to invite the two suspects to their office. Bong and Ben voluntarily went with them.

At the security office, Dio and Busing interviewed Bong and Ben. The suspects admitted that they took the lamp but clarified that they were only transferring it to a post nearer to the house of Lolita.[12] Soon, Navia arrived and Busing informed him that the complainant was not keen in participating in the investigation. Since there was no complainant, Navia ordered the release of Bong and Ben. Bong then signed a statement to the effect that the guards released him without inflicting any harm or injury to him.[13] His mother Lolita also signed the logbook below an entry which states that she will never again harbor or entertain Ben in her house. Thereafter, Lolita and Bong left the security office.

Ben was left behind as Navia was still talking to him about those who might be involved in the reported loss of electric wires and lamps within the subdivision. After a brief discussion though, Navia allowed Ben to leave. Ben also affixed his signature on the logbook to affirm the statements entered by the guards that he was released unharmed and without any injury.[14]

Upon Navia's instructions, Dio and Busing went back to the house of Lolita to make her sign the logbook as witness that they indeed released Ben from their custody. Lolita asked Busing to read aloud that entry in the logbook where she was being asked to sign, to which Busing obliged. Not contented, Lolita put on her reading glasses and read the entry in the logbook herself before affixing her signature therein. After which, the guards left.

Subsequently, petitioners received an invitation[15] from the Malolos City Police Station requesting them to appear thereat on April 17, 2008 relative to the complaint of Virginia Pardico (Virginia) about her missing husband Ben. In compliance with the invitation, all three petitioners appeared at the Malolos City Police Station. However, since Virginia was not present despite having received the same invitation, the meeting was reset to April 22, 2008.[16]

On April 22, 2008, Virginia attended the investigation. Petitioners informed her that they released Ben and that they have no information as to his present whereabouts.[17] They assured Virginia though that they will cooperate and help in the investigation of her missing husband.[18]

Version of the Respondent

According to respondent, Bong and Ben were not merely invited. They were unlawfully arrested, shoved into the Asian Land vehicle and brought to the security office for investigation. Upon seeing Ben at the security office, Navia lividly grumbled "Ikaw na naman?"[19] and slapped him while he was still seated. Ben begged for mercy, but his pleas were met with a flurry of punches coming from Navia hitting him on different parts of his body.[20] Navia then took hold of his gun, looked at Bong, and said, "Wala kang nakita at wala kang narinig, papatayin ko na si Ben." [21]

Bong admitted that he and Ben attempted to take the lamp. He explained that the area where their house is located is very dark and his father had long been asking the administrator of Grand Royale Subdivision to install a lamp to illumine their area. But since nothing happened, he took it upon himself to take a lamp from one of the posts in the subdivision and transfer it to a post near their house. However, the lamp Bong got was no longer working. Thus, he reinstalled it on the post from which he took it and no longer pursued his plan. [22]

Later on, Lolita was instructed to sign an entry in the guard's logbook where she undertook not to allow Ben to stay in her house anymore.[23] Thereafter, Navia again asked Lolita to sign the logbook. Upon Lolita's inquiry as to why she had to sign again, Navia explained that they needed proof that they released her son Bong unharmed but that Ben had to stay as the latter's case will be forwarded to the barangay. Since she has poor eyesight, Lolita

obligingly signed the logbook without reading it and then left with Bong.[24] At that juncture, Ben grabbed Bong and pleaded not to be left alone. However, since they were afraid of Navia, Lolita and Bong left the security office at once leaving Ben behind.[25]

Moments after Lolita and Bong reached their house, Busing arrived and asked Lolita to sign the logbook again. Lolita asked Busing why she had to sign again when she already twice signed the logbook at the headquarters. Busing assured her that what she was about to sign only pertains to Bong's release. Since it was dark and she has poor eyesight, Lolita took Busing's word and signed the logbook without, again, reading what was written in it. [26]

The following morning, Virginia went to the Asian Land security office to visit her husband Ben, but only to be told that petitioners had already released him together with Bong the night before. She then looked for Ben, asked around, and went to the barangay. Since she could not still find her husband, Virginia reported the matter to the police.

In the course of the investigation on Ben's disappearance, it dawned upon Lolita that petitioners took advantage of her poor eyesight and naivete. They made her sign the logbook as a witness that they already released Ben when in truth and in fact she never witnessed his actual release. The last time she saw Ben was when she left him in petitioners' custody at the security office.[27]

Exasperated with the mysterious disappearance of her husband, Virginia filed a Petition for Writ of Amparo[28] before the RTC of Malolos City. Finding the petition sufficient in form and substance, the amparo court issued an Order[29] dated June 26, 2008 directing, among others, the issuance of a writ of amparo and the production of the body of Ben before it on June 30, 2008. Thus:

WHEREFORE, conformably with Section 6 of the Supreme Court Resolution [in] A.M. No. 07-[9]-12-SC, also known as "The Rule On The Writ Of Amparo", let a writ of amparo be issued, as follows:

(1)

ORDERING [petitioners] Edgardo Navia, Ruben Dio and Andrew Busing of the Asian Land Security Agency to produce before the Court the body of aggrieved party Benhur Pardico, on Monday, June 30, 2008, at 10:30 a.m.;

(2)

ORDERING the holding of a summary hearing of the petition on the aforementioned date and time, and DIRECTING the [petitioners] to personally appear thereat;

(3)

COMMANDING [petitioners] Edgardo Navia, Ruben Dio and Andrew Busing to file, within a non-extendible period of seventy-two (72) hours from service of the writ, a verified written return with supporting affidavits which shall, among other things, contain the following:

a)

The lawful defenses to show that the [petitioners] did not violate or threaten with violation the right to life, liberty and security of the aggrieved party, through any act or omission;

b)

The steps or actions taken by the [petitioners] to determine the fate or whereabouts of the aggrieved party and the person or persons responsible for the threat, act or omission; and

c)

All relevant information in the possession of the [petitioners] pertaining to the threat, act or omission against the aggrieved party.

(4)

GRANTING, motu proprio, a Temporary Protection Order prohibiting the [petitioners], or any persons acting for and in their behalf, under pain of contempt, from threatening, harassing or inflicting any harm to [respondent], his immediate family and any [member] of his household.

The Branch Sheriff is directed to immediately serve personally on the [petitioners], at their address indicated in the petition, copies of the writ as well as this order, together with copies of the petition and its annexes.[30]

A Writ of Amparo[31] was accordingly issued and served on the petitioners on June 27, 2008.[32] On June 30, 2008, petitioners filed their Compliance[33] praying for the denial of the petition for lack of merit.

A summary hearing was thereafter conducted. Petitioners presented the testimony of Busing, while Virginia submitted the sworn statements[34] of Lolita and Enrique which the two affirmed on the witness stand.

Ruling of the Regional Trial Court

On July 24, 2008, the trial court issued the challenged Decision[35] granting the petition. It disposed as follows:

WHEREFORE, the Court hereby grants the privilege of the writ of amparo, and deems it proper and appropriate, as follows:

(a) To hereby direct the National Bureau of Investigation (NBI) to immediately conduct a deep and thorough investigation of the [petitioners] Edgardo Navia, Ruben Dio and Andrew Busing in connection with the circumstances surrounding the disappearance of [Benhur] Pardico, utilizing in the process, as part of the investigation, the documents forming part of the records of this case;

(b) To hereby direct the NBI to extend to the family of [Benhur] Pardico and the witnesses who testified in this case protection as it may deem necessary to secure their safety and security; and

(c) To hereby direct the Office of the Provincial Prosecutor of Bulacan to investigate the circumstances concerning the legality of the arrest of [Benhur] Pardico by the [petitioners] in this case, utilizing in the process, as part of said investigation, the pertinent documents and admissions forming part of the record of this case, and take whatever course/s of action as may be warranted.

Furnish immediately copies of this decision to the NBI, through the Office of Director Nestor Mantaring, and to the Provincial Prosecutor of Bulacan.

SO ORDERED.[36]

Petitioners filed a Motion for Reconsideration[37] which was denied by the trial court in an Order[38] dated August 29, 2008.

Hence, this petition raising the following issues for our consideration:

4.1. WHETHER X X X THE HONORABLE TRIAL COURT GRAVELY ERRED IN RULING THAT RESPONDENT IS ENTITLED TO THE PRIVILEGE OF THE WRIT OF AMPARO.

4.1.1. WHETHER X X X RESPONDENT WAS ABLE TO ESTABLISH THAT PETITIONERS HAVE COMMITTED OR ARE COMMITTING ACTS IN VIOLATION OF HER HUSBAND'S RIGHT TO LIFE, LIBERTY, OR SECURITY.

4.1.2. WHETHER X X X RESPONDENT SUFFICIENTLY ESTABLISHED THE FACT OF THE DISAPPEARANCE OF BENHUR PARDICO.

4.1.3. WHETHER X X X RESPONDENT WAS ABLE TO ESTABLISH THAT THE ALLEGED DISAPPEARANCE OF BENHUR PARDICO WAS AT THE INSTANCE OF HEREIN PETITIONERS.[39]

Petitioners' Arguments

Petitioners essentially assail the sufficiency of the amparo petition. They contend that the writ of amparo is available only in cases where the factual and legal bases of the violation or threatened violation of the aggrieved party's right to life, liberty and security are clear. Petitioners assert that in the case at bench, Virginia miserably failed to establish all these. First, the petition is wanting on its face as it failed to state with some degree of specificity the alleged unlawful act or omission of the petitioners constituting a violation of or a threat to Ben's right to life, liberty and security. And second, it cannot be deduced from the evidence Virginia adduced that Ben is missing; or that petitioners had a hand in his alleged disappearance. On the other hand, the entries in the logbook which bear the signatures of Ben and Lolita are eloquent proof that petitioners released Ben on March 31, 2008 at around 10:30 p.m. Petitioners thus posit that the trial court erred in issuing the writ and in holding them responsible for Ben's disappearance.

Our Ruling

Virginia's Petition for Writ of Amparo is fatally defective and must perforce be dismissed, but not for the reasons adverted to by the petitioners.

A.M. No. 07-9-12-SC or The Rule on the Writ of Amparo was promulgated to arrest the rampant extralegal killings and enforced disappearances in the country. Its purpose is to provide an expeditious and effective relief "to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity." [40]

Here, Ben's right to life, liberty and security is firmly settled as the parties do not dispute his identity as the same person summoned and questioned at petitioners' security office on the night of March 31, 2008. Such uncontroverted fact ipso facto established Ben's inherent and constitutionally enshrined right to life, liberty and security. Article 6[41] of the International Covenant on Civil and Political Rights[42] recognizes every human being's inherent right to life, while Article 9[43] thereof ordains that everyone has the right to liberty and security. The right to life must be protected by law while the right to liberty and security cannot be impaired except on grounds provided by and in accordance with law. This overarching command against deprivation of life, liberty and security without due process of law is also embodied in our fundamental law.[44]

The pivotal question now that confronts us is whether Ben's disappearance as alleged in Virginia's petition and proved during the summary proceedings conducted before the court a quo, falls within the ambit of A.M. No. 07-9-12-SC and relevant laws.

It does not. Section 1 of A.M. No. 07-9-12-SC provides:

SECTION 1. Petition. – The petition for a writ of amparo is a remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity.

The writ shall cover extralegal killings and enforced disappearances or threats thereof. (Emphasis ours.)

While Section 1 provides A.M. No. 07-9-12-SC's coverage, said Rules does not, however, define extralegal killings and enforced disappearances. This omission was intentional as the Committee on Revision of the Rules of

Court which drafted A.M. No. 07-9-12-SC chose to allow it to evolve through time and jurisprudence and through substantive laws as may be promulgated by Congress.[45] Then, the budding jurisprudence on amparo blossomed in *Razon, Jr. v. Tagitis*[46] when this Court defined enforced disappearances. The Court in that case applied the generally accepted principles of international law and adopted the International Convention for the Protection of All Persons from Enforced Disappearance's definition of enforced disappearances, as "the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law." [47]

Not long thereafter, another significant development affecting A.M. No. 07-9-12-SC came about after Congress enacted Republic Act (RA) No. 9851[48] on December 11, 2009. Section 3(g) thereof defines enforced or involuntary disappearances as follows:

(g) "Enforced or involuntary disappearance of persons" means the arrest, detention, or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing from the protection of the law for a prolonged period of time.

Then came *Rubrico v. Macapagal-Arroyo*[49] where Justice Arturo D. Brion wrote in his Separate Opinion that with the enactment of RA No. 9851, "the Rule on the Writ of Amparo is now a procedural law anchored, not only on the constitutional rights to the rights to life, liberty and security, but on a concrete statutory definition as well of what an 'enforced or involuntary disappearance' is." [50] Therefore, A.M. No. 07-9-12-SC's reference to enforced disappearances should be construed to mean the enforced or involuntary disappearance of persons contemplated in Section 3(g) of RA No. 9851. Meaning, in probing enforced disappearance cases, courts should read A.M. No. 07-9-12-SC in relation to RA No. 9851.

From the statutory definition of enforced disappearance, thus, we can derive the following elements that constitute it:

- (a) that there be an arrest, detention, abduction or any form of deprivation of liberty;
- (b) that it be carried out by, or with the authorization, support or acquiescence of, the State or a political organization;
- (c) that it be followed by the State or political organization's refusal to acknowledge or give information on the fate or whereabouts of the person subject of the amparo petition; and,
- (d) that the intention for such refusal is to remove subject person from the protection of the law for a prolonged period of time.

As thus dissected, it is now clear that for the protective writ of amparo to issue, allegation and proof that the persons subject thereof are missing are not enough. It must also be shown and proved by substantial evidence that the disappearance was carried out by, or with the authorization, support or acquiescence of, the State or a political organization, followed by a refusal to acknowledge the same or give information on the fate or whereabouts of said missing persons, with the intention of removing them from the protection of the law for a prolonged period of time. Simply put, the petitioner in an amparo case has the burden of proving by substantial evidence the indispensable element of government participation.

In the present case, we do not doubt Bong's testimony that Navia had a menacing attitude towards Ben and that he slapped and inflicted fistic blows upon him. Given the circumstances and the pugnacious character of Navia at

that time, his threatening statement, “Wala kang nakita at wala kang narinig, papatayin ko na si Ben,” cannot be taken lightly. It unambiguously showed his predisposition at that time. In addition, there is nothing on record which would support petitioners’ assertion that they released Ben on the night of March 31, 2008 unscathed from their wrath. Lolita sufficiently explained how she was prodded into affixing her signatures in the logbook without reading the entries therein. And so far, the information petitioners volunteered are sketchy at best, like the alleged complaint of Mrs. Emphasis who was never identified or presented in court and whose complaint was never reduced in writing.

But lest it be overlooked, in an amparo petition, proof of disappearance alone is not enough. It is likewise essential to establish that such disappearance was carried out with the direct or indirect authorization, support or acquiescence of the government. This indispensable element of State participation is not present in this case. The petition does not contain any allegation of State complicity, and none of the evidence presented tend to show that the government or any of its agents orchestrated Ben’s disappearance. In fact, none of its agents, officials, or employees were impleaded or implicated in Virginia’s amparo petition whether as responsible or accountable persons.[51] Thus, in the absence of an allegation or proof that the government or its agents had a hand in Ben’s disappearance or that they failed to exercise extraordinary diligence in investigating his case, the Court will definitely not hold the government or its agents either as responsible or accountable persons.

We are aware that under Section 1 of A.M. No. 07-9-12-SC a writ of amparo may lie against a private individual or entity. But even if the person sought to be held accountable or responsible in an amparo petition is a private individual or entity, still, government involvement in the disappearance remains an indispensable element. Here, petitioners are mere security guards at Grand Royale Subdivision in Brgy. Lugam, Malolos City and their principal, the Asian Land, is a private entity. They do not work for the government and nothing has been presented that would link or connect them to some covert police, military or governmental operation. As discussed above, to fall within the ambit of A.M. No. 07-9-12-SC in relation to RA No. 9851, the disappearance must be attended by some governmental involvement. This hallmark of State participation differentiates an enforced disappearance case from an ordinary case of a missing person.

WHEREFORE, the July 24, 2008 Decision of the Regional Trial Court, Branch 20, Malolos City, is REVERSED and SET ASIDE. The Petition for Writ of Amparo filed by Virginia Pardico is hereby DISMISSED.

SO ORDERED.

Carpio, Leonardo-De Castro, Brion, Peralta, Bersamin, Abad, Villarama, Jr., Perez, Sereno, Reyes, and Perlas-Bernabe, JJ. , concur.

Velasco, Jr., J., on official leave.

Mendoza, J., on leave.

[1] Also known and signs his name as Edgardo Nabia.

[2] Also known and signs his name as Ruben Dio II.

[3] Section 3(g), REPUBLIC ACT NO. 9851, otherwise known as the Philippine Act On Crimes Against International Humanitarian Law, Genocide and Other Crimes Against Humanity.

[4] Rollo, pp. 3-38.

[5] The Rule on the Writ of Amparo, which took effect on October 24, 2007.

[6] Records, Vol. I, pp. 78-98; penned by Judge Oscar C. Herrera, Jr.

[7] Records, Vol. I, pp. 2-6.

[8] Also referred to as Asian Land Security Agency or Grand Royale Security Agency in some parts of the records.

[9] See Sinumpaang Salaysay of Lolita Lapore and the Malaya at Kusangloob na Pahayag ni Enrique Lapore, records, vol. I, pp. 7-10.

[10] See Sinumpaang Salaysay of Lolita Lapore, id. at 7-8.

[11] See 2115H Logbook Entry, id. at 48.

[12] See testimony of Andrew Busing, July 3, 2008 TSN, p. 15.

[13] See 2200H Logbook Entry, records, vol. I, p. 48.

[14] See 2230H Logbook Entry, id. at 49.

[15] See letter of PO1 Gerry Paulino, id. at 50.

[16] See letter of SPO1 Gilberto Punzalan, id. at 51.

[17] See testimony of Andrew Busing, July 3, 2008 TSN, p. 25.

[18] See Police Blotter Entry No. 08-1230, records, vol. I, p. 52.

[19] See testimony of Enrique Lapore, July 2, 2008 TSN, p. 8.

[20] See the Malaya at Kusangloob na Pahayag ni Enrique Lapore, records, vol. I, pp. 9-10.

[21] Id. at 10.

[22] Supra note 9.

[23] See testimony of Lolita Lapore, July 1, 2008, TSN, p. 7; See also Exhibit "2", records, vol. I, pp. 30-31.

[24] Supra note 10.

[25] Supra note 20.

[26] Supra note 9.

[27] Supra note 10.

[28] Supra note 7.

[29] Records, Vol. 1, pp. 11-15.

[30] Id. at 13-14.

[31] Id. at 16-17.

[32] See Sheriff's Return, id. at 18.

[33] Id. at 36-47.

[34] Supra note 9.

[35] Supra note 6.

[36] Records, Vol. I, pp. 97-98.

[37] Id. at 134-148.

[38] Id. at 184.

[39] See petitioners' Memorandum, rollo, pp. 180-181.

[40] Section 1, A.M. No. 07-9-12-SC.

[41] Article 6(1), Part III of the International Covenant on Civil and Political Rights provides:

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

x x x x

[42] Ratified by the Philippines on October 23, 1986.

[43] Article 9, Part III of the International Covenant on Civil and Political Rights provides:

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

x x x x

[44] See Section 1, Article III of the 1987 Constitution which reads:

Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

[45] Annotations on the Rule on the Writ of Amparo, published by the Supreme Court, p. 47.

[46] G.R. No. 182498, December 3, 2009, 606 SCRA 598.

[47] Id. at 670.

[48] PHILIPPINE ACT ON CRIMES AGAINST INTERNATIONAL HUMANITARIAN LAW, GENOCIDE, AND OTHER CRIMES AGAINST HUMANITY.

[49] G.R. No. 183871, February 18, 2010, 613 SCRA 233.

[50] Id. at 276.

[51] In *Razon, Jr. v. Tagitis* (Supra note 45 at 620-621), the Court explained that "Responsibility refers to the extent the actors have been established by substantial evidence to have participated in whatever way, by action or omission, in an enforced disappearance, as a measure of the remedies this Court shall craft, among them, the directive to file the appropriate criminal and civil cases against the responsible parties in the proper courts. Accountability, on the other hand, refers to the measure of remedies that should be addressed to those who exhibited involvement in the enforced disappearance without bringing the level of their complicity to the level of responsibility defined above; or who are imputed with knowledge relating to the enforced disappearance and who carry the burden of disclosure; or those who carry, but have failed to discharge, the burden of extraordinary diligence in the investigation of the enforced disappearance. In all these cases, the issuance of the Writ of Amparo is justified by our primary goal of addressing the disappearance, so that the life of the victim is preserved and his liberty and security are restored."

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