

IN THE MATTER OF THE PETITION FOR THE ISSUANCE OF THE WRIT OF HABEAS CORPUS FOR YOLANDA H. GORDULA. LETICIA H. GORDULA, MARINA H. GORDULA AND NESTOR H. GORDULA, PETITIONERS, VS....

G.R. No. 63761. October 24, 1983

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

One can understand the anxiety and frustration felt by the kin of Yolanda H. Gordula in connection with her "disappearance." If it is of any consolation to them, it should be mentioned that her fate is not unique. It has happened to others.

G.R. No. 62939 concerns a petition for habeas corpus. Jesus Alejandrino and Rogelio Tiglao were arrested by military authorities on September 19, 1982. First brought to a Philippine Constabulary camp in Malolos, Bulacan, they were later transferred to the 172nd PC Company in San Fernando, Pampanga, where they were seen by their relatives. On September 20, 1982, this is what happened as stated in the affidavit of Pampanga Assistant Provincial Fiscal Gaudencio H. Balingit:

"That on September 20, 1982, Patrolman Santiago Rodriguez, assigned with Pampanga CC, San Fernando, Pampanga, appeared in the office of the undersigned together with certain JESUS A LEJANDRINO y Manahan and ROGELIO TIGLAO y Dizon of San Agustin, Arayat, Pampanga and Bulac, Sta Maria, Bulacan, respectively;

"That said Patrolman Rodriguez together with the above-named persons were bringing with them Affidavit manifesting that they (Alejandrino and Tiglao) were brought to the PC Headquarters for questioning in connection with their alleged involvement with subversive elements and that they were released from the custody of the said PC command on the said date (Sept 20, 1982) having found out that there was no truth in the alleged accusation;

"That the undersigned after examining Messrs Alejandrino and Tiglao of the veracity of what they alleged in their affidavit and having sworn to before the undersigned the truthfulness of the same as well as the genuineness of their signatures, said affidavit was duly subscribed by the undersigned;

"That after the subscription of the affidavit, Patrolman Rodriguez left the office leaving behind Jesus Alejandrino and Rogelio Tiglao and after conducting some inquiries to them, they too left the office;

"That I am executing this affidavit to prove the above-mentioned facts."

Alejandrino and Tiglao never returned to their respective places of abode. In a petition for habeas corpus filed by Mrs. Luz Alejandrino and Mrs. Carmelita Tiglao, they aver that:

"Jesus and Rogelio would not simply disappear unless they are still held incommunicado, either at 172nd PC Company or at Camp Olivas, both at San Fernando, Pampanga, or a safehouse known only to respondents,

raising the apprehension that they are being tortured; or worse, they had been summarily executed or 'salvaged' by their military custodians, in violation of their constitutional rights."

In the return to the writ, it is said that:

"Respondents have neither information nor evidence that men from their commands had, without authority, kidnapped Alejandrino and Tiglao after their release from custody."

The petition remains pending; Jesus and Rogelio are still missing.

G.R. No. 64500 is another petition for habeas corpus. The petition states that Joseph Goyenechea was arrested on May 26, 1983, in Oroquieta City by a PC Lt. Ochate and three other persons. Since then Joseph has not been seen nor heard from. The petitioners ask that the body of Joseph be produced. In their return, the respondents deny the arrest and detention of Joseph for which reason it is said that there is no record in the Oroquieta City INP Station of his apprehension. The case is still pending.

Amnesty International in the report of its mission to the Philippines in November, 1981, mentions cases of "disappearance" which include the following:

"Jose Alto, a former construction worker, 'disappeared' on 27 November 1980 after being abducted on his way home from the Don Bosco School where he was working. As he approached his house in San Jose Street, Barrio Magsaysay, Tondo, Metro Manila, two men accosted him, forced him into a parked car and drove away. The abduction was witnessed by his sister, Erlinda Alto Aristorenas, who lives next door. She said a long-haired man wearing sunglasses, shorts and slippers had stayed in the car and pointed out her brother to the two outside; they had military-style haircuts and wore polo shirts, she said.

"On 1 December 1980 the houses of the brother and sister were searched by a group of military men in civilian clothes. Nothing was taken away. The mother, Priscilla Alto, who lives in Jose Alto's house, was asked to sign a statement to the effect that nothing had been taken, which she did.

"Jose Alto's family have been unable to trace him since his abduction. Between 5 and 10 December 1980 his mother visited police stations, the head-quarters of the Philippine Constabulary, Camp Crame (where she made contact with officials of the Military Intelligence and Security Group (MISG) and the Criminal Investigation Service (CIS)) and Camp Bagong Diwa (the Bicutan Rehabilitation Centre) in search of her son. The authorities whom she approached denied all knowledge of his whereabouts.

"On 18 March 1981 a neighbor informed her that he had seen Jose Alto that day accompanied by two men in civilian clothes sitting in a stationary brown Volkswagen. He had approached and greeted Jose Alto, whereupon the car had been hurriedly driven off.

"On 31 March 1981 Priscilla Alto delivered a letter to the Ministry of National Defense requesting assistance in trying to locate her son. She also visited the Office of Detainee Affairs (ODA) of the Ministry of National Defense, where she reported the sighting of the brown Volkswagen. Officials of the ODA suggested she go to the License Division of the Land Transportation Division. There she was told that the owner of the car could not be identified on the basis of the incomplete number plate noted by the neighbor."

The instant case is a petition for habeas corpus filed by Leticia Marina and Nestor all surnamed Gordula. They ask, among other things, that the respondents be ordered to produce the body of their sister Yolanda. The petition makes the following allegation:

"2. 01. YOLANDA H. GORDULA was arrested without warrant or PCO on or about March 30, 1983, some-where in Caloocan City, by elements of the Metrocom Intelligence Service Group [MISG] under the command of respondent Abadilla.

"2. 02. Upon learning of their sister's arrest, petitioners exerted efforts to locate her. Among other steps, they visited the Constabulary Security Group [CSG], the PC-INP Stockade, PC 12, MISG, M-2, Special Operations Group [SOG], and the Metrocom Investigation Unit [MIU]. At each of these detention units petitioners were officially told that their sister YOLANDA H. GORDULA was not detained in it.

"2. 03. Petitioners also made inquiries with the Ministry of National Defense, the Office for Detainee Affairs and the Civilian Relations Division. These offices neither denied nor confirmed YOLANDA's arrest nor revealed her place of detention.

"2. 04. On April 19, 1983, petitioner Leticia H. Gordula went to M-2 [Intelligence Unit], Camp Crame, Quezon City. There she was allowed to see M-2's log book. On page 41 of said log book was written:

#1831 18-13-15/83 MISG SCR

Petitioner Leticia was told that the above numbers refer to her sister YOLANDA. She was further told that YOLANDA was had been brought to MISG sometime in the evening of April 18, 1983, and that YOLANDA was now detained at MISG.

"2. 05. Petitioner Leticia then went to MISG and requested that she be allowed to visit her sister YOLANDA. However, petitioner Leticia was told by a secretary employed at MISG that YOLANDA was not listed among MISG records and in the MISG log book.

"2. 06. Under the circumstances, YOLANDA's disappearance for 20 days raises the apprehension that she is being tortured by respondents at an undisclosed place or safehouse to obtain statements in violation of her constitutional rights."

This Court issued a writ of habeas corpus and required the respondents to file a return to the petition. In their return the respondents ask for the dismissal of the petition on the basis of the following disclaimer:

"1. The person subject of the writ, Yolanda H. Gordula, is not in the custody of the military. She has not been arrested nor detained particularly by the elements of the Metrocom Intelligence Service Group (MISG) headed by respondent Col. Rolando Abadilla, contrary to petitioners' assertion. Proof of this is a Certification to that effect, dated April 26, 1983, executed under oath by Majors Sotero E. Soriano and Jaime P. Valencia, Jr., of the Constabulary Judge Advocate and of the Metrocom Staff Judge Advocate, respectively, a true xerox copy of which is hereto attached as Annex "1" and made an integral part hereof;

"2. Petitioners' averment respecting the entry in the M-2's (Intelligence Unit's) log book which reads "#1831 18-13-15/83 MISG SCR" does not refer to the supposed arrest and detention of Yolanda H. Gordula. The same pertains to the letter-communication of petitioners dated April 11, 1983, requesting the Honorable Minister of National Defense to locate the whereabouts of aforesaid subject person. Said letter which was received on April 12, 1983 was endorsed on April 15, 1983, by the Office for Detainee Affairs, Ministry of National Defense (MND) to the Commander, Command for the Administration of Detainee, Camp Aguinaldo (CADO), who, on the same day, April 15, 1983, forwarded the same to the Office of Metrocom Adjutant (OMA). The latter then referred the matter to the Metrocom Intelligence Unit (M-2), which, in turn, transmitted said letter to the Metrocom Intelligence Service Group (MISG) on April 18, 1983 at 1315 hours or 1:15 p. m. It was the transmittal of aforesaid letter and indorsements which was reflected in the M-2 Communication Journal or log book. Thus, it will be noted that as reflected in the M-2 log book, said letter and indorsement were sent out by M-2 to the MISG on '181315' - which refers to the date and time (April 18 1315 hours); the entry 'MISG' refers to the unit where the same was forwarded; and 'SCR' are the initials of the MISG personnel, Susan C. Rivera, who received the same. True xerox copies of aforesaid letter as well as the indorsements of MND to CADO CADO to OMA, and the communication journals or log books from OMA to M-2, and M-2 to MISG, and the MISG Communication Journal, are hereto attached as Annexes "2", "3", "4", "5", "6" and "7", respectively, and made integral parts hereof. Clearly, said log book referred to by

petitioners pertains to communications received and not to persons detained;"

The traverse and the reply thereto have not elicited any solid fact except the circumstance that Yolanda was with Dr. Jose Escandor in the evening of March 30, 1983. Dr. Escandor said to be an NPA "Kumander" was shot dead by a Metrocom reaction strike force in Quezon City on April 1, 1983. And the question remains: where is Yolanda?

Considering that the respondents have persistently denied having Yolanda H. Gordula in their custody and absent convincing proof to rebut their denial, the Court is constrained to dismiss the petition.

The writer has received a letter from Mrs. Lolita Gordula who lives in Virginia Beach, Virginia, U.S.A. Mrs. Gordula, who is Yolanda's mother, asks that the case be decided.

This is the response to the request. Mrs. Gordula, I commiserate with you but this is the best that can be done under the circumstances.

WHEREFORE, the petition is dismissed without prejudice to the filing of another as may be warranted by new factual circumstances. No costs.

SO ORDERED.

Fernando, C.J., Teehankee, Makasiar, Aquino, Concepcion, Jr., Guerrero, Melencio-Herrera, Plana, Escolin, Relova, and Gutierrez, Jr., JJ., concur.

De Castro, J., on sick leave.

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