

**IN THE MATTER OF THE PETITION FOR HABEAS CORPUS OF ROLAN
“LEVI” YBAÑEZ, LILIBETH SUBAYNO, PETITIONER, VS.
HON. JUAN PONCE ENRILE, ET AL., RESPONDENTS.**

G.R. No. 71359. October 28, 1986

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

G.R. No. 71359 [In the Matter of the Petition for Habeas Corpus of ROLAN "Levi" YBAÑEZ, LILIBETH SUBAYNO vs. HON. JUAN PONCE ENRILE, LT. GEN. FIDEL V. RAMOS, BRIG. GEN. RENATO A. ECARMA, LT. COL. JEWEL E. CANSON and COL. MARIANO BACCAY]. - Rolan "Levi" Ybañez, an officer of the Coalition Against People's Persecution which is the education arm of the Bagong Alyansang Makabayan [BAYAN], was abducted by armed men at around 1:30 in the afternoon of July 11, 1985 near the corner of Sanciango and Pelaez Streets, Cebu City. He was pushed into an old-model car variously described as chocolate brown, coffee brown, caramel or maroon in color, with tinted glass windows and with plate No. DS 871 or DSB 971. The car then sped away towards the direction of Jones Avenue.

Alleging that his abductors were elements of the Regional Security Unit [RSU], Military Intelligence Group [MIG], Ybañez's sweetheart and boardmate. Lilibeth Subayno, filed the instant petition for habeas corpus on July 19, 1985.

On July 30, 1985, this Court issued the writ. In their verified Return, respondents stated that although Ybañez was reported missing to the Cebu Philippine Constabulary Metro District Command in mid-July 1985, Ybañez is not and has never been under their custody or restraint.

The case was heard on August 8, 1985. Lilibeth testified. Captain Geary Barias, who conducted the investigation regarding the alleged apprehension of Ybañez by military men, was likewise asked questions and submitted his report to the Court. The Assistant Solicitor General also submitted a certification of the officer-in-charge of the Property Division of the Land Transportation Commission dated August 5, 1985 that plate No. DSB 971 has not yet been manufactured.

During that hearing, the Court resolved to set the case for another hearing on August 16, 1985 with Justice Serafin Cuevas as Commissioner.

On August 15, 1985, the respondents, through the Solicitor General, filed a motion requesting clarification on the nature and purpose of the investigation to be conducted by the Court on August 16. They averred that Ybañez's abduction is a criminal act which should be investigated by the police authorities.

They expressed apprehension that the hearing would become no more than an ex-parte investigation of the case for the Court cannot make a final determination that the persons identified by witnesses really have Ybañez in their custody. They believed that under the ruling in *U.S. vs. Navarro*, 3 Phil. 143, the persons identified at the hearing would be subjected to self-incrimination if they are compelled to produce Ybañez.

During the August 16 hearing-investigation, Major Eddie "Jack" Ebuén, the officer-in-charge of Military Intelligence Group 7, testified that he learned of the abduction of Ybañez several days later through the newspapers. As Captain Geary Barias had informed him that some of the suspects were from his outfit, he asked around twenty of his men about the abduction. All of them denied having participated therein. He also interviewed Cp. Wilfredo "Boy" Dagatan and Cp. Jose Pitogo because of their alleged involvement in the abduction of Father Rudy Romano but they denied having anything to do with Ybañez's abduction.

Major Marciano del Mar, the head of the Regional Security Unit based in Camp Lapu-Lapu, Cebu City, declared that on July 14, 1985, Members of Parliament Antonio V. Cuenco and Nenita Cortes Daluz came to his office, but, as he was not around, his men allowed them to see the cell and verify whether Ybañez was there. According to him, because of the local gossip that the RSU and MIG were involved in the abduction of Ybañez, he issued verbal instructions to his men to gather information about the incident. He admitted that although his unit monitored activities of the BAYAN, they had no information as to the name of its education officer. He also testified that: [1] while there are six in the list of cars owned by their unit, only two of them are operational - a Ford Galant colored gray and a Datsun colored blue; [2] they use security plates; and [3] a clearance from headquarters is needed to change any car's color.

Counsel for petitioner Jose W. Diokno presented Felician L. Duran as witness. Mrs. Duran, the owner of Fely's Beauty Pad along Sanciango Street, testified that at past 1:00 o'clock in the afternoon of July 11, 1985, she saw a medium-built, wavy-haired, fair-complexioned man in blue and white striped T-shirt, gray denims and blue sneakers whom she later learned to be Rolan Ybañez, walking along the street. As he approached a coffee brown car parked along the street, two men got off the car, dragged Ybañez towards it, forced him inside and once he was inside, one of the men poked a sidearm at Ybañez' head. Ybañez shouted and struggled but soon the car sped away towards Jones Avenue or Osmeña Boulevard. Then two men arrived. They retrieved the papers which Ybañez was holding and which were scattered on the ground when he was snatched. They took a jeepney going towards Osmeña Boulevard.

The coffee brown car had a driver but Mrs. Duran could not recognize him as the car's windows were tinted. She could not identify the man who shoved Ybañez into the car as his back was turned towards her. The other man was medium-built, with short, wavy hair, brown complexion and taller than Ybañez.

At that point in the hearing, the Assistant Solicitor General confronted her with her statement dated August 10, 1985 wherein she stated in Cebuano that "I cannot recognize or remember their faces even if I were to see or meet them again" [Exh. H; Rollo, p. 41]. She claimed she can identify the one facing her if he is shown to her personally.

Captain Geary Barias agreed that a line-up for purposes of identification could be arranged but the Assistant Solicitor General objected that it would be a security risk. Brigadier General Renato Ecarma pointed out that according to Captain Barias, the prime suspect in Ybañez's abduction is a certain Boy Elegu but he has not yet been apprehended.

The Court gave General Ecarma seven days or until August 23 within which to secure clearance from his superiors in connection with the suggested line-up of MIG 7 and RSU 7 personnel.

On August 22, 1985, the Solicitor General filed a manifestation and motion stating that respondents could not as yet formulate their view on the proposed police line-up. They reiterated their motion for clarification on the nature of the August 16 hearing- investigation.

In her comment on that manifestation and motion, which was filed in compliance with the resolution of

September 12, 1985, petitioner stated that in filing said manifestation and motion, respondents resorted to a dilatory scheme "to provide them ample time to reshuffle, transfer or re-assign the personnel involved" in the abduction of Ybañez. That comment was noted by the Court in the resolution of October 10, 1985.

However, on June 10, 1986, this Court denied the respondents' motion for clarification and directed that the line-up of MIG 7 and RSU 7 personnel assigned in Cebu City in July, 1985, be conducted by the respondents who must submit a report thereon.

The respondent "officers and men" of MIG 7, represented by private counsel, filed a motion for the reconsideration of said June 10 resolution, alleging that the proposed line-up had no basis in fact and in law as even witness Feliciano Duran herself testified that she could not identify the armed abductors of Ybañez, and that said line-up would set a dangerous precedent prejudicial to national security because the respondent military personnel, who, by the nature of their official missions must remain anonymous, would be exposed to public view.

We required the Solicitor General to comment on said motion for reconsideration but before he could do so, he received a communication from the Judge Advocate General's Office stating that the line-up had been set for July 1, 1986, it was in fact conducted the following day, July 2, 1986.

In his report to the Office of the Solicitor General dated July 14, 1986, Col. Manuel B. Casclang, Deputy Judge Advocate General, stated that 22 RSU 7 and 11 MIG 7 personnel were lined up in Camp Lapu-Lapu before witness Fely Duran in the presence of BAYAN, FLAG and religious personalities, namely, Atty. Alfredo Surigao, Atty. Meinardo [Meinrado] Paredes, Cebu Vice-Governor OIC Democrito Barcenas and Redemptorist Vice-Provincial Fr. Roman [Ramon] Fruto. Two student witnesses and a businessman witness failed to attend said line-up. [Rollo, p. 60-A].

Petitioner considered the line-up that was conducted on July 2, 1986 as "inadequate, insufficient and unsatisfactory". However, the Office of the Solicitor General, through Assistants Solicitor General Ramon A. Barcelona and Zoilo A. Andin and Trial Attorney Roman G. del Rosario, maintained that said line-up be considered as sufficient compliance with the resolution of June 10, 1986. Solicitor General Sedfrey A. Ordoñez, who himself was required to comment on the adequacy of the line-up pursuant to this Court's effort to elicit as many views as possible on its conduct, agreed that it was carried out in consonance with this Court's order.

The August 16, 1985 investigation and the July 2, 1986 line-up should not, in any way, be considered as a transgression of the jurisprudential mandate that the writ of habeas corpus may not be used as a means of obtaining evidence on the whereabouts of a person [Application of Cutting, 316 F. 2d 516; 39 C.J.S. 476]. Said proceedings were resorted to because of the fact that while there is evidence on the actual abduction of Ybañez, there is difficulty in ascertaining the identity of the abductors.

Under the foregoing circumstances, the return or the writ must be taken on its face value considering that, unless it is in some way traversed or denied, the facts stated therein must be taken as true [Lorenzo vs. McCoy, 15 Phil. 559, 584]. Moreover, a writ of habeas corpus should not issue where it is not necessary to afford the petitioner relief or where it would be ineffective [39 C.J.S. 477].

Hence, for the time being, the petition must be dismissed but without prejudice to the filing of another petition should new factual circumstances warrant it [Gordula vs. Enrile, G.R. No. 63761, October 24, 1983, 125 SCRA 152. See also Villacilio vs. Hon. Ponce Enrile, G.R. No. 71148, April 29, 1986 and Rev. Fr. Luis G. Hechanova & Rev. Fr. Hugh O'Donoghue vs. Hon. Ponce Enrile, G.R. No. 71316, October 2, 1986].

ACCORDINGLY, the petition for habeas corpus is hereby dismissed without prejudice to its refiling should there be substantial proof that Rolan "Levi" Ybañez is under the custody of any person or entity. The respondents and

all concerned in the Armed Forces of the Philippines are directed to exert utmost efforts in locating Rolan "Levi" Ybañez.

Let a copy of this Resolution be furnished the Commission on Human Rights for appropriate action.

SO ORDERED.

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