

IN THE MATTER OF THE PETITION FOR HABEAS CORPUS IN BEHALF OF DANIEL NGAYA-AN, CARMENCITA NGAYA-AN, CLEMENTE WINGNGA AND FELISA NGAYA-AN TACALIG, PETITIONERS, VS. CONRADO BALWEG,...

G.R. No. 80591. August 05, 1991

Ponente: PARAS, J.

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PARAS, J.:

This is an original petition for habeas corpus filed directly before this Court in behalf of Daniel Ngaya-an. Petitioners Carmencita Ngaya-an, Clemente Wingnga and Felisa Ngaya-an Tacalig (Petitioners for brevity) are the wife, brother and sister, respectively, of Daniel Ngaya-an. Named as respondents are Conrado Balweg alias "Ka Ambo" the Head of Cordillera People's Liberation Army (CPLA for short), Sagmayao Appag alias "Ka Sulong" the Head of the CPLA Moro Company and the CPLA.

In their petition dated November 17, 1987, petitioners alleged, among others, that Daniel Ngaya-an is the Chairman of the Cordillera Bodong Association; that sometime on October 5, 1987, at a checkpoint manned by elements of the CPLA situated at Cagaluan Gate, Pasil, Kalinga-Apayao on direct order of Sagmayao Appag alias "Ka Sulong" Daniel was forcibly taken and brought to their headquarters at Cagaluan Pasil, Kalinga-Apayao; that Daniel has been detained and deprived of his liberty by respondents; that respondents have no legal basis nor authority to detain him; that Daniel has not committed a crime nor charged with an offense for which he can be legally detained; that petitioners together with their relatives and friends went several times to the CPLA detachment at Cagaluan but respondents refused to release Daniel and reveal the place where he is detained; that respondent Balweg in a radio interview admitted that the CPLA is responsible for the disappearance of Daniel and even hinted that he will be or had been killed by the CPLA. As relief petitioners prayed that a writ of habeas corpus be issued directing respondents to produce the body of Daniel and show cause for his detention. They also prayed that after hearing Daniel be restored of his liberty and discharged from confinement.

On November 23, 1987, the Second Division of this Court resolved to issue a writ returnable to the Executive Judge of the Regional Trial Court of Baguio City. It also directed the Executive Judge to hear the case and submit its report to this Court which retains full control over the petition. Likewise, the respondents were required to respect Daniel's constitutional rights, (Rollo, p. 9).

Through registered speed air mail respondents Conrado Balweg and the CPLA were furnished a copy of the resolution dated November 23, 1987, at the Cordillera House, Presidential Mansion House, Wright Park, Baguio City, the address of the respondents stated in the petition. In addition respondents were advised of said resolution by telegrams sent by Second Division Clerk of Court Salvador de Guzman. The copy of the resolution sent to respondent Appag was returned unserved with the notation from the post office that the addressee is unknown in Cagaluan, Pasil, Kalinga-Apayao, the address indicated in the petition.

On December 9, 1989, pursuant to this Court's resolution dated November 23, 1987, RTC Executive Judge Stella

Dadivas-Farrales of Baguio City twice called the case for hearing, but there was no appearance by the respondents.

On December 16, 1987, the petitioners filed a motion to cite respondents for contempt. They pointed out that respondents should be punished for their refusal to obey the November 23, 1987 resolution of this Court. They also prayed that the RUC Comander of Region I be deputized to serve the writ of habeas corpus on the respondents.

In this Court's resolution dated January 6, 1988 the respondents were required to comment on the motion for contempt. Copy of the resolution was sent by registered mail to the respondents at their respective addresses as stated in the petition. Again the copy of the resolution sent to respondent Appag was returned unserved with the notation that the addressee is unknown.

On April 11, 1988, this Court issued another resolution directing the PC Provincial Commander of Region I at Dangwa to serve on the respondents the resolution of January 6, 1988. Copy of the resolution was again sent by registered mail to respondents.

On May 19, 1988, Col. Honorio Capulong of the AFP Northern Luzon Command, informed this Court that the Office of Conrado Balweg at the Presidential Mansion House Complex refused to receive the resolution of January 6, 1988 alleging that said refusal is in compliance with the CBA-CPLA Collective Agreement.

On June 22, 1988, the Second Division referred the case to the Court En Banc en consulta. In its resolution dated August 30, 1988, the Court En Banc accepted the case.

On petitioners' motion, the Court En Banc issued a resolution directing the Northern Luzon Command to submit a report on whether the resolution of January 6, 1988 was served on respondents. Copy of said resolution for Conrado Balweg and the CPLA was received by Celso Martinez on October 4, 1988.

On August 24, 1989, the Court En Banc resolved to order the arrest of respondent Balweg. The Chief of Staff of the Armed Forces of the Philippines was directed to arrest respondent Balweg and incarcerate him until he complies with the aforementioned resolution of this Court (Rollo, pp. 152-154).

On September 6, 1989, respondent Balweg, thru his counsel Atty. Romeo Bringas, filed an urgent motion to lift the order of arrest alleging among others that he has not defied any lawful order of this Court. He pointed out that he is not residing nor holding office at the Cordillera House. He also denied having authorized Celso Martinez or anybody to receive any mail matter or resolution in his behalf at the Cordillera House or elsewhere. In his motion he also requested a period of thirty (30) days to file his comment on the petition.

In their comment and opposition to the urgent motion filed on September 15, 1989, petitioners argued that the urgent motion dated September 6, 1989 is a mere scrap of paper as it was not verified by respondent Balweg but by a certain Ama Mariano Agosto who claims to be the Deputy Chief Executive of the Cordillera Bodong Administration.

On September 27, 1989, respondent Balweg, thru his counsel, filed a reply to petitioners' comment and opposition. The reply was verified by respondent Balweg and subscribed before the Assistant Clerk of Court Luzviminda Puno of this Court. On even date respondent Balweg also filed his compliance/comment of the resolutions of this Court dated November 23, 1987, January 6, 1988 and August 30, 1988.

On October 27, 1989, the Court En Banc resolved to lift, effective immediately, the order of arrest it had issued on August 24, 1989. It also exonerated respondent Balweg from the charge of contempt. This Court noted that respondent Balweg has not defied the order of this Court as he never resided at the place where said order was

served. Respondent Balweg was required to appear before Executive Judge Stella Dadivas-Farrales and make a return of the writ of habeas corpus (Rollo, pp. 190-191).

In his return of the writ of habeas corpus dated November 3, 1989, respondent Balweg alleged inter alia that Daniel Ngaya-an is not in his custody; that he has not ordered the apprehension of Daniel; that he has nothing to do with the disappearance of Daniel; that he learned of Daniel's disappearance in the radio and newspaper reports; that the petition does not specifically state his participation in the disappearance of Daniel so that the petition states no cause of action against him.

Despite notice served on December 26, 1989, petitioners failed to produce their witnesses in the hearing scheduled on February 5, 1990. To avoid delay, Executive Judge Stella Dadivas-Farrales allowed respondent Balweg to present his evidence. In his testimony respondent Balweg confirmed the statements contained in his return of the writ of habeas corpus dated November 3, 1989 which was marked as Exhibit "1". His compliance/comment filed on September 27, 1989 before this Court, marked as Exhibit "2" was also offered together with Exhibit "1" as part of the testimony of respondent Balweg, Atty. Noe Villanueva, who appeared as counsel for petitioners, cross-examined respondent Balweg.

On April 30, 1990, pursuant to the resolution of the Court En Banc dated March 1, 1990, allowing Atty. Noe Villanueva to present evidence for the petitioner, Judge Stella Dadivas-Farrales heard the testimony of Carmencita Ngaya-an the wife of Daniel Ngaya-an. In her testimony she declared that her husband left Kalinga-Apayao to attend a seminar of the Cordillera People's Alliance on September 7, 1987; that on October 5, 1987 on his way home her husband was abducted; that on October 6, 1987 she was informed by her uncle Gavino Lao-en that her husband was captured by the CPLA at Cagaluan Gate; that together with her brothers, sisters, and relatives numbering about 50, on the same day, they proceeded to the Cagaluan Gate to talk with the CPLA; that at the Cagaluan Gate she talked with Sagmayao Appag alias "Ka Sulong", the Commander of the CPLA; that Sagmayao Appag informed her that they talked to her husband but "they let him leave" and "sent him away"; that she retorted that if it is true that her husband left them he should be in their home; that they left the barracks and searched the surroundings at the Cagaluan Gate and in the river; that the search lasted for 10 days but they were not able to find Daniel Ngaya-an; that she knows Conrado Balweg alias "Ka Ambo", because she saw him before; that "Ka Ambo" wrote a letter dated October 20, 1987 to Barangay Captain Balway requesting for a conference; that they did not go to Captain Balway for a conference because they were afraid that if they do not consent to the wishes of "Ka Ambo" they will be imprisoned.

Ramon Edduba, another witness for the petitioners, testified that on October 5, 1987, at around 1:30 o'clock in the afternoon, while he was standing in front of the restaurant at the Cagaluan Gate, a jeep arrived with Daniel Ngaya-an as one of the passengers seating in the front portion of the jeep; that as Daniel was about to step down from the jeep, Sagmayao Appag together with four (4) other men carrying long firearms, one of whom he identified was "Ka Ambo", the "Assistant" of Sagmayao Appag, approached the former and got some papers from him; that after Daniel refused to drink liquor "Ka Sulong" and his men tied his hand and feet with a rope; that Daniel shouted for help when he was carried to the detachment but nobody helped him; that after that he boarded a jeepney and left the place. On direct examination he identified the affidavit he executed on November 19, 1987. When cross-examined he admitted to Atty. Romeo Bringas, the counsel for respondent Balweg that he did not know the full name of "Ka Ambo" and the other companions of Sagmayao Appag.

Petitioners formally offered Exhibit "A", the letter dated October 20, 1987 of "Ka Ambo" in the Ilocano dialect with a translation in the English Language by Court Interpreter Teodora Paquito and Exhibit "B", the affidavit dated November 17, 1987 of witness Ramon Edduba, after which they rested their case.

The primary issue to be resolved is whether or not Daniel Ngaya-an is unlawfully detained or restrained of his liberty by respondent Balweg and the CPLA.

Habeas corpus generally applies to "all cases of illegal confinement or detention by which any person is deprived of his liberty or by which the rightful custody of any person is withheld from the person entitled thereto." (Section 1, Rule 102, Revised Rules of Court).

The ultimate purpose of the writ of habeas corpus is to relieve a person from unlawful restraint. (*Castriciones v. Chief of Staff Armed Forces of the Philippines*, G.R. No. 65731, September 28, 1989, En Banc, Minute Resolution; *Mizuaki Takenouchi v. Cristi et al.*, G.R. 82232, July 25, 1988, Third Division, Minute Resolution). It is devised as a speedy relief from unlawful restraint (*Villavicencio v. Lukban*, 39 PHIL. 778). It is a remedy intended to determine whether the person under detention is held under lawful authority (*Quintos v. Director of Prisons*, 55 Phil. 304).

In passing upon a petition for habeas corpus, the Court must determine whether: (1) the person in whose behalf the application is made is imprisoned or restrained of his liberty; (2) the name of the person detaining another; (3) the place where he is imprisoned or restrained of his liberty; (4) the cause of his detention (Section 3, Rule 102, Revised Rules of Court). Only if the Court is satisfied that a person is unlawfully restrained of his liberty that the petition for habeas corpus will be granted and the person detained will be released from confinement (*Gonzales v. Viola*, 61 Phil. 824). If the respondents are not detaining nor restraining the applicants or the person in whose behalf the petition for habeas corpus is filed the petition should be dismissed (In the matter of the Petition for Habeas Corpus of Ferdinand E. Marcos etc. v. Executive Secretary Catalino Macaraig, May 18, 1989, G.R. No. 88079, En Banc, Minute Resolution).

In the case at bar, petitioners miserably failed to substantiate by clear and convincing evidence that Daniel Ngaya-an in whose behalf the petition has been filed is under the custody or is unlawfully detained and restrained of his liberty by the respondent Balweg. The only evidence linking respondent Balweg to the disappearance of Daniel Ngaya-an is the declaration of Ramon Edduba, the lone eyewitness for the petitioners that on October 5, 1987, at about 1:30 o'clock in the afternoon, Sagmayao Appag together with "Ka Ambo" and three other men carrying long firearms accosted Daniel Ngaya-an at the Cagaluan Gate and thereafter with a rope tied on Daniel's hands and feet he was carried to the detachment. Witness Edduba apparently committed an error in naming "Ka Ambo" as one of the companions of Sagmayao Appag as he declared that "Ka Ambo" is the assistant of Sagmayao Appag (TSN, June 19, 1990, p. 6, Rollo, p. 231). On cross-examination he even admitted that he does not know the full name of "Ka Ambo". In the affidavit he executed on November 19, 1987, which petitioners offered as Exhibit "B", Ramon Edduba declared that before Daniel Ngaya-an could step down from the jeep he was approached by Sagmayao Appag accompanied by men armed with long firearms one of whom he identified as "Ka Elias". He has not declared nor even insinuated that respondent Conrado Balweg popularly known as "Ka Ambo" the Head of the CPLA was with the group of Sagmayao Appag when Daniel Ngaya-an was accosted at the Cagaluan Gate on October 5, 1987.

Ostensibly, the disappearance of Daniel Ngaya-an was established by Ramon Edduba's testimony corroborated by Carmencita Ngaya-an the wife of Daniel Ngaya-an. However, the granting of the relief is not predicated on the disappearance of a person. The petitioners must establish by competent and convincing evidence that the missing person in whose behalf the petition is filed is under the custody of the respondents.

Here there is no evidence that respondent Balweg the Head of the CPLA, is responsible for the disappearance of Daniel. Neither is there any evidence that the missing person is presently detained by respondent Balweg. On his part respondent Balweg has not only categorically denied that Daniel Ngaya-an is under his custody but also that

he is not responsible for his disappearance.

It is possible that based on the testimony of Ramon Edduba the person responsible for the disappearance of Daniel is respondent Sagmayao Appag. However, we could not grant the relief and order respondent Sagmayao Appag to release Daniel because up to now this Court has not acquired jurisdiction over the person of respondent Appag. As borne by the records of this case, the writ issued on November 23, 1987, as well as the subsequent resolutions of this Court, were returned unserved because respondent Appag is unknown at Cagaluán, Pasil, Kalinga-Apayao, the address indicated in the petition.

All law enforcement agencies of the government must join hands in locating the whereabouts of Daniel Ngaya-an who has been missing since October 5, 1987. The National Bureau of Investigation can conduct its own investigation so that if warranted by the result of its investigation, Sagmayao Appag alias "Ka Sulong" and all persons responsible for the abduction or disappearance of Daniel Ngaya-an can be prosecuted for the crime they have committed.

PREMISES CONSIDERED, the petition is DISMISSED without prejudice to reinstatement and further proceedings, if necessary, the moment the petitioners can furnish the Court the exact address where Sagmayao Appag can be served with the legal processes of this Court. Let the Chief of Staff, Armed Forces of the Philippines, National Bureau of Investigation and the Commissioner of Human Rights be furnished a copy of this recommendation for their appropriate action.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Griño-Aquino, Medialdea, Regalado, and Davide, Jr., JJ., concur.

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