

RODOLFO NOEL LOZADA, JR., VIOLETA LOZADA AND ARTURO LOZADA, PETITIONERS, VS. PRESIDENT GLORIA MACAPAGAL ARROYO, EDUARDO ERMITA, AVELINO RAZON, ANGEL ATUTUBO AND SPO4 ROGER VALER...*G.R. Nos. 184379-80. April 24, 2012*

Ponente: SERENO, J.

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What the Court decides today has nothing to do with the substance or merits surrounding the aborted deal of the Philippine government with the National Broadband Network and ZTE Corporation, or any allegation of petitioner Rodolfo Noel “June” Lozada, Jr., (Lozada) regarding the same. There is only one issue that we decide today – whether circumstances are adequately alleged and proven by petitioner Lozada to entitle him to the protection of the writ of amparo. Before us is a Petition for Review on Certiorari of the Decision dated 12 September 2008 of the Court of Appeals (CA), dismissing the Petition for the Issuance of a Writ of Amparo.[1]

Petitioner Lozada was the former President and Chief Executive Officer of the Philippine Forest Corporation (PFC), a government-owned- and -controlled corporation under the Department of Environment and Natural Resources (DENR).[2] Petitioner Violeta Lozada (Violeta) is his wife, while petitioner Arturo Lozada (Arturo) is his brother.

At the time the Petition for the Writ of Amparo was filed, respondent former President Gloria Macapagal Arroyo (former President Arroyo) was the incumbent President of the Philippines. Meanwhile, Eduardo Ermita (ES Ermita) was then the Executive Secretary; Avelino Razon (Razon), the Director General of the Philippine National Police (PNP); Angel Atutubo (Atutubo), the Assistant General Manager for Security and Emergency Services of the Manila International Airport Authority; and Rodolfo Valeroso (Valeroso), an agent of the Aviation Security Group (ASG) of the PNP.

Antecedent Facts

The instant Petition stems from the alleged corruption scandal precipitated by a transaction between the Philippine government, represented by the National Broadband Network (NBN), and ZTE Corporation (ZTE), a Chinese manufacturer of telecommunications equipment.[3] Former National Economic Development Authority (NEDA) Secretary Romulo Neri (Sec. Neri) sought the services of Lozada as an unofficial consultant in the ZTE-NBN deal.[4] The latter avers that during the course of his engagement, he discovered several anomalies in the said transaction involving certain public officials.[5] These events impelled the Senate of the Philippines Blue Ribbon Committee (Blue Ribbon Committee) to conduct an investigation thereon,[6] for which it issued a subpoena directing Lozada to appear and testify on 30 January 2008.[7]

On that date, instead of appearing before the Blue Ribbon Committee, Lozada left the country for a purported official trip to London, as announced by then DENR Secretary Lito Atienza (Sec. Atienza).[8] In the Petition, Lozada alleged that his failure to appear at the scheduled hearing was upon the instructions of then Executive

Assistant Undersecretary Manuel Gaité (Usec. Gaité).[9] Consequently, the Senate issued an Order dated 30 January 2008: (a) citing Lozada for contempt; (b) ordering his arrest and detention; and (c) directing the Senate Sergeant-at-Arms to implement the Order and make a return thereon.[10]

While overseas, Lozada asked Sec. Atienza whether the former could be allowed to go back to the Philippines.[11] Upon the approval of Sec. Atienza, Lozada informed his family that he was returning from Hong Kong on 5 February 2008 on board Cathay Pacific Flight No. 919, bound to arrive in Manila at 4:40 p.m. on the same day.[12]

In the Petition, Lozada claims that, upon disembarking from the aircraft, several men held his arms and took his bag. Although he allegedly insisted on meeting with his family, he later realized that it was wiser to just follow them, especially when he overheard from their handheld radio: “[H]wag kayong dumaan diyan sir nandyan ang mga taga senado.”[13]

Lozada asked if he could go to the comfort room, an opportunity he used to call up his brother, petitioner Arturo, and inform him of his situation.[14] The men thereafter led him through the departure area of the airport and into a car waiting for them.[15] They made him sit alone at the back of the vehicle, while a man, whom he later discovered to be respondent Valeroso, took the passenger seat and was always in contact with other individuals.[16] Lozada observed that other cars tailed their vehicle.[17]

Sec. Atienza then phoned Lozada, assuring the latter that he was with people from the government, and that the former was going to confer with “ES and Ma’[a]m.” Lozada surmised that these individuals referred to ES Ermita and former President Arroyo, respectively.[18] Sec. Atienza also purportedly instructed Lozada to pacify his wife, petitioner Violeta, who was making public statements asking for her husband’s return.[19]

The vehicle traversed the South Luzon Expressway and drove towards the direction of Laguna.[20] Along the way, the men asked Lozada to draft an antedated letter requesting police protection.[21]

Lozada requested that he be brought home to Pasig, but the men were allegedly compelled to deny his request on account of unidentified security risks.[22] Eventually, however, the vehicle turned around and drove to Libis, Quezon City. The group stopped at The Outback restaurant to meet with certain individuals, who turned out to be Atty. Antonio Bautista (Atty. Bautista) and Colonel Paul Mascarinas (Col. Mascarinas) of the Police Special Protection Office (PSPO). At the restaurant, Lozada claimed that he was made to fill in the blanks of a prepared affidavit.[23]

After the meeting, the men informed Lozada that they were going to billet him in a hotel for a night, but he suggested that they take him to La Salle Green Hills instead. The men acquiesced.[24]

Upon arriving in La Salle Green Hills, Lozada was met by Violeta and his sister, Carmen Lozada (Carmen).[25] He observed that the perimeter was guarded by policemen, purportedly restraining his liberty and threatening not only his security, but also that of his family and the De La Salle brothers.[26]

On 6 February 2008, at around 10:00 a.m., Col. Mascarinas supposedly brought Lozada to the office of Atty. Bautista to finalize and sign an affidavit.[27]

At about 1:00 p.m., Violeta filed before this Court a Petition for Habeas Corpus, docketed as G.R. No. 181342 (the Habeas Corpus case).[28] Arturo likewise filed before this Court a Petition for a Writ of Amparo, docketed as G.R. No. 181356 (the Amparo case), and prayed for the issuance of (a) the writ of amparo; (b) a Temporary Protection Order (TPO); and (c) Inspection and Production Orders as regards documents related to the authority ordering custody over Lozada, as well as any other document that would show responsibility for his alleged

abduction.[29]

At around the same time that Arturo filed the Petition for a Writ of Amparo, Col. Mascarinas drove Lozada back to La Salle Green Hills.[30] Lozada was then made to sign a typewritten, antedated letter requesting police protection.[31] Thereafter, former Presidential Spokesperson Michael Defensor (Sec. Defensor) supposedly came and requested Lozada to refute reports that the latter was kidnapped and to deny knowledge of alleged anomalies in the NBN-ZTE deal. Sec. Defensor then purportedly gave Lozada P50,000 for the latter's expenses.[32]

On 7 February 2008, Lozada decided to hold a press conference and contact the Senate Sergeant-at-Arms, who served the warrant of arrest on him.[33] Lozada claimed that after his press conference and testimony in the Senate, he and his family were since then harassed, stalked and threatened.[34]

On the same day, this Court issued a Resolution (a) consolidating the Habeas Corpus case and the Amparo case; (b) requiring respondents in the Habeas Corpus case to comment on the Petition; (c) issuing a Writ of Amparo; (d) ordering respondents in the Amparo case to file their verified Return; (e) referring the consolidated Petitions to the CA; and (f) directing the CA to set the cases for hearing on 14 February 2008.[35] Accordingly, the court a quo set both cases for hearing on 14 February 2008.[36]

On 12 February 2008, respondents filed before the CA a Manifestation and Motion, praying for the dismissal of the Habeas Corpus case.[37] They asserted that Lozada was never illegally deprived of his liberty and was, at that time, no longer in their custody. They likewise averred that, beginning 8 February 2008, Lozada had already been under the supervision of the Senate and, from then on, had been testifying before it.[38]

In their verified Return, respondents claimed that Sec. Atienza had arranged for the provision of a security team to be assigned to Lozada, who was then fearful for his safety.[39] In effect, respondents asserted that Lozada had knowledge and control of the events that took place on 5 February 2008, voluntarily entrusted himself to their company, and was never deprived of his liberty. Hence, respondents prayed for the denial of the interim reliefs and the dismissal of the Petition.[40]

During the initial hearing on 14 February 2008, Lozada and Violeta ratified the Petition in the Amparo case[41] to comply with Section 2 of the Rule on the Writ of Amparo,[42] which imposes an order to be followed by those who can sue for the writ.[43] The CA also dismissed the Habeas Corpus case in open court for being moot and academic, as Lozada was physically present and was not confined or detained by any of the respondents.[44] Considering that petitioners failed to question the dismissal of the Habeas Corpus case, the said dismissal had lapsed into finality, leaving only the Amparo case open for disposition.

Thereafter, Lozada filed a Motion for Temporary Protection Order and Production of Documents,[45] while Arturo filed a Motion for Production of Documents.[46] Additionally, Arturo also filed a Motion for the Issuance of Subpoena Ad Testificandum and Presentation of Hostile Witnesses and Adverse Parties Romulo Neri, Benjamin Abalos, [Sr.], Rodolfo Valeroso, "Jaime" the Driver and Other Respondents. Respondents opposed these motions.[47] The CA denied the Motion for the Issuance of Subpoena on the ground that the alleged acts and statements attributed to Sec. Neri and Benjamin Abalos (Abalos) were irrelevant to the Amparo case, and that to require them to testify would only result in a fishing expedition.[48] The CA likewise denied Arturo's subsequent Motion for Reconsideration.[49]

In its Resolution dated 5 March 2008, the CA dropped former President Arroyo as a respondent on the ground that at the time the Petition in the Amparo case was filed, she was still the incumbent President enjoying immunity from suit.[50] Arturo filed a Motion for Reconsideration,[51] which the CA denied in its Resolution dated 25 March 2008.[52]

On 12 September 2008, the CA rendered its Decision denying petitioners the privilege of the Writ of Amparo and dismissing the Petition.[53] The CA found that petitioners were unable to prove through substantial evidence that respondents violated, or threatened with violation, the right to life, liberty and security of Lozada.

Petitioners thus filed the instant Petition, praying for: (a) the reversal of the assailed CA Decision; (b) the issuance of the TPO; and (c) the accreditation of the Association of Major Religious Superiors of the Philippines and the De La Salle Brothers as the sanctuaries of Lozada and his family.[54] In the alternative, petitioners pray that this Court remand the case to the CA for further hearings and reverse the latter's Orders: (a) denying the Motion to Issue a Subpoena Ad Testificandum and (b) dropping former President Arroyo as a respondent. Petitioners raise the following issues:

(1) Whether the Court a [q]uo erred in ruling to dismiss the petition for a writ of amparo and deny Petitioners' prayer for a Temporary Protection Order, inter alia, because there is no substantial evidence to prove that the right to life, liberty or security of Jun Lozada was violated or threatened with violation. This rule is not in accord with the rule on the writ of amparo and Supreme Court jurisprudence on substantial evidence[.]

(2) Whether the Ponencia erred and gravely abused its discretion by prematurely ruling that the testimony of witnesses which Petitioners sought to present and who are subject of the Motion for Issuance of Subpoena ad testificandum were irrelevant to the Petition for a Writ of Amparo in a way not in accord with the Rules of Court and Supreme Court decisions.

(3) Whether the Court a quo erred in using and considering the affidavits of respondents in coming up with the questioned decision when these were not offered as evidence and were not subjected to cross-examination. This ruling is not in accord with the Rules of Court and jurisprudence.

(4) Whether the Court a [q]uo erred in dropping as respondent Pres. Gloria Arroyo despite her failure to submit a verified return and personally claim presidential immunity in a way not in accord with the Rule on the Writ of Amparo.[55]

The Office of the Solicitor General (OSG) asserts that petitioners failed to adduce substantial evidence, as the allegations they propounded in support of their Petition were largely hearsay.[56] The OSG also maintains that it was proper for the CA to have dropped former President Arroyo as respondent on account of her presidential immunity from suit.[57]

Respondent Atutubo also alleges, among others, that: (a) Lozada voluntarily asked for security and protection; (b) Lozada willingly submitted himself to the company of the police escorts; (c) Atutubo merely accompanied him to pass through the contingency route customarily provided to VIP passengers, public figures, foreign dignitaries, and the like; and (d) Atutubo only performed his job to ensure security and maintain order at the airport upon the arrival of Lozada.[58]

In the face of these assertions by respondents, petitioners nevertheless insist that while they have sufficiently established that Lozada was taken against his will and was put under restraint, respondents have failed to discharge their own burden to prove that they exercised extraordinary diligence as public officials.[59] Petitioners also maintain that it was erroneous for the CA to have denied their motion for subpoena ad testificandum for being irrelevant, given that the relevancy of evidence must be examined after it is offered, and not before.[60] Finally, petitioners contend that the presidential immunity from suit cannot be invoked in amparo actions.[61]

Issues

In ruling on whether the CA committed reversible error in issuing its assailed Decision, three issues must be discussed:

- Whether the CA committed an error in dropping former President Arroyo as a respondent in the Amparo

case.

- Whether the CA committed an error in denying petitioners' Motion for the Issuance of a Subpoena Ad Testificandum.
- Whether petitioners should be granted the privilege of the writ of amparo.

Discussion

The writ of amparo is an independent and summary remedy that provides rapid judicial relief to protect the people's right to life, liberty and security.[62] Having been originally intended as a response to the alarming cases of extrajudicial killings and enforced disappearances in the country, it serves both preventive and curative roles to address the said human rights violations. It is preventive in that it breaks the expectation of impunity in the commission of these offenses, and it is curative in that it facilitates the subsequent punishment of perpetrators by inevitably leading to subsequent investigation and action.[63]

As it stands, the writ of amparo is confined only to cases of extrajudicial killings and enforced disappearances, or to threats thereof.[64] Considering that this remedy is aimed at addressing these serious violations of or threats to the right to life, liberty and security, it cannot be issued on amorphous and uncertain grounds,[65] or in cases where the alleged threat has ceased and is no longer imminent or continuing.[66] Instead, it must be granted judiciously so as not to dilute the extraordinary and remedial character of the writ, thus:

The privilege of the writ of amparo is envisioned basically to protect and guarantee the rights to life, liberty, and security of persons, free from fears and threats that vitiate the quality of this life. It is an extraordinary writ conceptualized and adopted in light of and in response to the prevalence of extra-legal killings and enforced disappearances. Accordingly, the remedy ought to be resorted to and granted judiciously, lest the ideal sought by the Amparo Rule be diluted and undermined by the indiscriminate filing of amparo petitions for purposes less than the desire to secure amparo reliefs and protection and/or on the basis of unsubstantiated allegations.[67] (Emphasis supplied.)

Using this perspective as the working framework for evaluating the assailed CA decision and the evidence adduced by the parties, this Court denies the Petition.

First issue: Presidential immunity from suit

It is settled in jurisprudence that the President enjoys immunity from suit during his or her tenure of office or actual incumbency.[68] Conversely, this presidential privilege of immunity cannot be invoked by a non-sitting president even for acts committed during his or her tenure.[69]

In the case at bar, the events that gave rise to the present action, as well as the filing of the original Petition and the issuance of the CA Decision, occurred during the incumbency of former President Arroyo. In that respect, it was proper for the court a quo to have dropped her as a respondent on account of her presidential immunity from suit.

It must be underscored, however, that since her tenure of office has already ended, former President Arroyo can no longer invoke the privilege of presidential immunity as a defense to evade judicial determination of her responsibility or accountability for the alleged violation or threatened violation of the right to life, liberty and security of Lozada.

Nonetheless, examining the merits of the case still results in the denial of the Petition on the issue of former President Arroyo's alleged responsibility or accountability. A thorough examination of the allegations postulated and the evidence adduced by petitioners reveals their failure to sufficiently establish any unlawful act or omission

on her part that violated, or threatened with violation, the right to life, liberty and security of Lozada. Except for the bare claims that: (a) Sec. Atienza mentioned a certain “Ma’[a]m,”[70] whom Lozada speculated to have referred to her, and (b) Sec. Defensor told Lozada that “the President was ‘hurting’ from all the media frenzy,”[71] there is nothing in the records that would sufficiently establish the link of former President Arroyo to the events that transpired on 5-6 February 2010, as well as to the subsequent threats that Lozada and his family purportedly received.

Second issue: Denial of the issuance of a subpoena ad testificandum

This Court, in *Roco v. Contreras*,[72] ruled that for a subpoena to issue, it must first appear that the person or documents sought to be presented are prima facie relevant to the issue subject of the controversy, to wit:

A subpoena is a process directed to a person requiring him to attend and to testify at the hearing or trial of an action or at any investigation conducted under the laws of the Philippines, or for the taking of his deposition.

In this jurisdiction, there are two (2) kinds of subpoena, to wit: subpoena ad testificandum and subpoena duces tecum. The first is used to compel a person to testify, while the second is used to compel the production of books, records, things or documents therein specified. As characterized in *H.C. Liebenow vs. The Philippine Vegetable Oil Company*:

The subpoena duces tecum is, in all respects, like the ordinary subpoena ad testificandum with the exception that it concludes with an injunction that the witness shall bring with him and produce at the examination the books, documents, or things described in the subpoena.

Well-settled is the rule that before a subpoena duces tecum may issue, the court must first be satisfied that the following requisites are present: (1) the books, documents or other things requested must appear prima facie relevant to the issue subject of the controversy (test of relevancy); and (2) such books must be reasonably described by the parties to be readily identified (test of definiteness).[73] (Emphasis supplied.)

In the present case, the CA correctly denied petitioners’ Motion for the Issuance of Subpoena Ad Testificandum on the ground that the testimonies of the witnesses sought to be presented during trial were prima facie irrelevant to the issues of the case. The court a quo aptly ruled in this manner:

The alleged acts and statements attributed by the petitioner to Neri and Abalos are not relevant to the instant Amparo Petition where the issue involved is whether or not Lozada’s right to life, liberty and security was threatened or continues to be threatened with violation by the unlawful act/s of the respondents. Evidence, to be relevant, must have such a relation to the fact in issue as to induce belief in its existence or nonexistence. Further, Neri, Abalos and a certain driver “Jaime” are not respondents in this Amparo Petition and the vague allegations averred in the Motion with respect to them do not pass the test of relevancy. To Our mind, petitioner appears to be embarking on a “fishing expedition”. Petitioner should present the aggrieved party [Lozada], who has been regularly attending the hearings, to prove the allegations in the Amparo Petition, instead of dragging the names of other people into the picture. We have repeatedly reminded the parties, in the course of the proceedings, that the instant Amparo Petition does not involve the investigation of the ZTE-[NBN] contract. Petitioner should focus on the fact in issue and not embroil this Court into said ZTE-NBN contract, which is now being investigated by the Senate Blue Ribbon Committee and the Office of the Ombudsman.[74] (Emphasis supplied.)

All the references of petitioners to either Sec. Neri or Abalos were solely with respect to the ZTE-NBN deal, and not to the events that transpired on 5-6 February 2008, or to the ensuing threats that petitioners purportedly received. Although the present action is rooted from the involvement of Lozada in the said government transaction, the testimonies of Sec. Neri or Abalos are nevertheless not prima facie relevant to the main issue of whether there was an unlawful act or omission on the part of respondents that violated the right to life, liberty and

security of Lozada. Thus, the CA did not commit any reversible error in denying the Motion for the Issuance of Subpoena Ad Testificandum.

Third issue: Grant of the privilege of the writ of amparo

A. Alleged violation of or threat to the right to life, liberty and security of Lozada

Sections 17 and 18 of the Rule on the Writ of Amparo requires the parties to establish their claims by substantial evidence,[75] or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[76] The use of this evidentiary threshold reveals the clear intent of the framers of the Rule on the Writ of Amparo to have the equivalent of an administrative proceeding, albeit judicially conducted, in addressing amparo situations.[77]

In cases where the violation of the right to life, liberty or security has already ceased, it is necessary for the petitioner in an amparo action to prove the existence of a continuing threat.[78] Thus, this Court held in its Resolution in *Razon v. Tagitis*:[79]

Manalo is different from Tagitis in terms of their factual settings, as enforced disappearance was no longer a problem in that case. The enforced disappearance of the brothers Raymond and Reynaldo Manalo effectively ended when they escaped from captivity and surfaced, while Tagitis is still nowhere to be found and remains missing more than two years after his reported disappearance. An Amparo situation subsisted in Manalo, however, because of the continuing threat to the brothers' right to security; the brothers claimed that since the persons responsible for their enforced disappearance were still at large and had not been held accountable, the former were still under the threat of being once again abducted, kept captive or even killed, which threat constituted a direct violation of their right to security of person.[80] (Emphasis supplied.)

In the present case, the totality of the evidence adduced by petitioners failed to meet the threshold of substantial evidence. Sifting through all the evidence and allegations presented, the crux of the case boils down to assessing the veracity and credibility of the parties' diverging claims as to what actually transpired on 5-6 February 2008. In this regard, this Court is in agreement with the factual findings of the CA to the extent that Lozada was not illegally deprived of his liberty from the point when he disembarked from the aircraft up to the time he was led to the departure area of the airport,[81] as he voluntarily submitted himself to the custody of respondents:

[Lozada] was one of the first few passengers to get off the plane because he was instructed by Secretary Atienza, through a phone call on the night of 04 February 2008, while he was still in Hong Kong, to proceed directly to the Bureau of Immigration so that few people would notice him and he could be facilitated in going out of the airport without any hassle from the people of the Senate Sergeant-at-Arms. Again, [Lozada] stated that he wanted to get away from the Senate people. [Lozada] even went to the men's room of the airport, after he was allegedly "grabbed", where he made a call to his brother Arturo, using his Globe phone, and he was not prevented from making said call, and was simply advised by the person who met him at the tube to (sic) "sir, bilisan mo na". When they proceeded out of the tube and while walking, [Lozada] heard from the radio track down, "wag kayo dyan, sir, nandyan yong mga taga Senado", so they took a detour and went up to the departure area, did not go out of the normal arrival area, and proceeded towards the elevator near the Duty Free Shop and then down towards the tarmac. Since [Lozada] was avoiding the people from the Office of the Senate Sergeant-at-Arms, said detour appears to explain why they did not get out at the arrival area, where [Lozada] could have passed through immigration so that his passport could be properly stamped.

This Court does not find any evidence on record that [Lozada] struggled or made an outcry for help when he was allegedly "grabbed" or "abducted" at the airport. [Lozada] even testified that nobody held him, and they were not hostile to him nor shouted at him. With noon day clarity, this Court finds that the reason why [Lozada] was fetched at the airport was to help him avoid the Senate contingent, who would arrest and detain him at the Office of the Senate Sergeant-at-Arms, until such time that he would appear and give his testimony,

pursuant to the Order of the Senate on the NBN-ZTE Project. [Lozada] clearly knew this because at that time, it was still his decision not to testify before the Senate. He agreed with that plan.[82] (Emphases supplied.)

The foregoing statements show that Lozada personally sought the help of Sec. Atienza to avoid the Senate personnel, and thus knew that the men who met him at the airport were there to aid him in such objective. Surely, the actions of Lozada evinced knowledge and voluntariness, uncharacteristic of someone who claims to have been forcibly abducted.

However, these men's subsequent acts of directing Lozada to board the vehicle and driving him around, without disclosing the exact purpose thereof, appear to be beyond what he had consented to and requested from Sec. Atienza. These men neither informed him of where he was being transported nor provided him complete liberty to contact his family members to assure them of his safety. These acts demonstrated that he lacked absolute control over the situation, as well as an effective capacity to challenge their instructions.

Nevertheless, it must be emphasized that if Lozada had in fact been illegally restrained, so much so that his right to liberty and security had been violated, the acts that manifested this restraint had already ceased and has consequently rendered the grant of the privilege of the writ of amparo moot. Whether or not Lozada was deprived of his liberty from the point when he was led inside the vehicle waiting for him at the airport up to the time he was taken to La Salle Green Hills, petitioners' assertions that Lozada and his family continue to suffer various threats from respondents remain unproven. The CA correctly found as follows:

The supposed announcement of General Razon over the radio that [Lozada] was in the custody of the PNP can neither be construed as a threat to [Lozada's] life, liberty and security. Certainly, no person in his right mind would make that kind of media announcement if his intent was indeed to threaten somebody's life, liberty and security.

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He claims that he is threatened by the alleged presence of armed men riding in motorcycle passing outside the De La Salle premises where he and his family are staying and by alleged threats of armed men around him at places where he went to. Again, these alleged threats were not proven by any evidence at all, as having originated from any of the respondents.

[Lozada] also considers the installation of the surveillance camera at the De La Salle and at St. Scholastica as indirect threat to his right to life, liberty and security. He claims that these are spy cameras. However, save for [Lozada's] self-serving claim, he simply failed to prove that they were installed or ordered installed by the respondents for the purpose of threatening his right to life, liberty and security.

[Lozada] further maintains that there is an alleged trend, i.e., wherever he goes, there is a bomb threat. There were bomb threats in the places where he went to like in [the Polytechnic University of the Philippines], Dagupan, Cebu and Bohol. However, [Lozada] himself testified that he did not try to ascertain where the bomb threats emanated. Plainly, there is no evidence on record that the bomb threats were made by the respondents or done upon their instigation.

Moreover, [Lozada] views the pronouncement of the Secretary of Justice that he was put on the watch list of the Bureau of Immigration as a threat to his life, liberty and security. This alleged threat is again unsupported by evidence, as in fact, [Lozada] testified that he did not ascertain from the Bureau of Immigration whether his name was actually in the official watch list of the Bureau. At any rate, the Secretary of Justice is not one of the respondents in the amparo petition, and there is no showing in the record that it was the respondents who ordered the same for the purpose of threatening him.

[Lozada] harps on the filing of alleged frivolous cases against him and his family as threat to his life, liberty and security. xxx However, [Lozada] himself testified that he does not know whether the respondents or any of

the respondents ordered the filing of these cases against him. In any event, said purported cases are to be determined based on their own merits and are clearly beyond the realm of the instant amparo petition filed against the respondents.[83] (Emphasis supplied.)

Finally, petitioners insist that while they were able to sufficiently establish their case by the required evidentiary standard, respondents failed to discharge their burden to prove their defenses by substantial evidence and to show that respondents exercised extraordinary diligence as required by the Rule on the Writ of Amparo.[84] This Court has squarely passed upon this contention in *Yano v. Sanchez*,[85] to wit:

The failure to establish that the public official observed extraordinary diligence in the performance of duty does not result in the automatic grant of the privilege of the amparo writ. It does not relieve the petitioner from establishing his or her claim by substantial evidence.

Thus, in amparo actions, petitioners must establish their claims by substantial evidence, and they cannot merely rely on the supposed failure of respondents to prove either their defenses or their exercise of extraordinary diligence. In this case, the totality of the evidence presented by petitioners fails to meet the requisite evidentiary threshold, and the privilege of the writ of amparo has already been rendered moot and academic by the cessation of the restraint to Lozada's liberty.

B. Propriety of the privilege of the writ of amparo and its interim reliefs

As previously discussed, there is no basis to grant Lozada the privilege of the writ of amparo, considering that the illegal restraint alleged in this case had already ceased and there is no imminent or continuing restriction on his liberty. In *Castillo v. Cruz*,[86] this Court held as follows:

Although respondents' release from confinement does not necessarily hinder supplication for the writ of amparo, absent any evidence or even an allegation in the petition that there is undue and continuing restraint on their liberty, and/or that there exists threat or intimidation that destroys the efficacy of their right to be secure in their persons, the issuance of the writ cannot be justified. (Emphasis supplied.)

Further, it appears that Lozada had already filed before the Department of Justice (DOJ) a Complaint charging respondents with kidnapping and attempted murder, docketed as I.S. No. 2008-467.[87] In this regard, this Court's ruling in *Rubrico v. Arroyo*[88] is worth considering:

First, a criminal complaint for kidnapping and, alternatively, for arbitrary detention rooted in the same acts and incidents leading to the filing of the subject amparo petition has been instituted with the OMB, docketed as OMB-P-C-07-0602-E. The usual initial steps to determine the existence of a prima facie case against the five (5) impleaded individuals suspected to be actually involved in the detention of Lourdes have been set in motion. It must be pointed out, though, that the filing of the OMB complaint came before the effectivity of the Amparo Rule on October 24, 2007.

Second, Sec. 22 of the Amparo Rule proscribes the filing of an amparo petition should a criminal action have, in the meanwhile, been commenced. The succeeding Sec. 23, on the other hand, provides that when the criminal suit is filed subsequent to a petition for amparo, the petition shall be consolidated with the criminal action where the Amparo Rule shall nonetheless govern the disposition of the relief under the Rule. Under the terms of said Sec. 22, the present petition ought to have been dismissed at the outset. But as things stand, the outright dismissal of the petition by force of that section is no longer technically feasible in light of the interplay of the following factual mix: (1) the Court has, pursuant to Sec. 6 of the Rule, already issued ex parte the writ of amparo; (2) the CA, after a summary hearing, has dismissed the petition, but not on the basis of Sec. 22; and (3) the complaint in OMB-P-C-07-0602-E named as respondents only those believed to be the actual abductors of Lourdes, while the instant petition impleaded, in addition, those tasked to investigate the kidnapping and detention incidents and their superiors at the top. Yet, the acts and/or omissions subject of the

criminal complaint and the amparo petition are so linked as to call for the consolidation of both proceedings to obviate the mischief inherent in a multiplicity-of-suits situation.

Given the above perspective and to fully apply the beneficial nature of the writ of amparo as an inexpensive and effective tool to protect certain rights violated or threatened to be violated, the Court hereby adjusts to a degree the literal application of Secs. 22 and 23 of the Amparo Rule to fittingly address the situation obtaining under the premises. Towards this end, two things are at once indicated: (1) the consolidation of the probe and fact-finding aspects of the instant petition with the investigation of the criminal complaint before the OMB; and (2) the incorporation in the same criminal complaint of the allegations in this petition bearing on the threats to the right to security. Withal, the OMB should be furnished copies of the investigation reports to aid that body in its own investigation and eventual resolution of OMB-P-C-O7-0602-E. Then, too, the OMB shall be given easy access to all pertinent documents and evidence, if any, adduced before the CA. Necessarily, Lourdes, as complainant in OMB-P-C-O7-0602-E, should be allowed, if so minded, to amend her basic criminal complaint if the consolidation of cases is to be fully effective. (Emphasis supplied.)

Thus, if the Complaint filed before the DOJ had already progressed into a criminal case, then the latter action can more adequately dispose of the allegations made by petitioners. After all, one of the ultimate objectives of the writ of amparo as a curative remedy is to facilitate the subsequent punishment of perpetrators.[89] On the other hand, if there is no actual criminal case lodged before the courts, then the denial of the Petition is without prejudice to the filing of the appropriate administrative, civil or criminal case, if applicable, against those individuals whom Lozada deems to have unduly restrained his liberty.

Finally, with respect to the interim reliefs sought by petitioners, this Court, in *Yano v. Sanchez*,^[90] declined to grant the prayer for the issuance of a TPO, as well as Inspection and Production Orders, upon a finding that the implicated public officials were not accountable for the disappearance subject of that case. Analogously, it would be incongruous to grant herein petitioners' prayer for a TPO and Inspection and Production Orders and at the same time rule that there no longer exists any imminent or continuing threat to Lozada's right to life, liberty and security. Thus, there is no basis on which a prayer for the issuance of these interim reliefs can be anchored.

WHEREFORE, the instant petition is DENIED for being moot and academic. The Court of Appeals' denial of the privilege of the writ of amparo is hereby AFFIRMED.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Leonardo-De Castro, Brion, Peralta, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Reyes, and Perlas-Bernabe, JJ., concur.

[*] Corrected by the Office of the Solicitor General (OSG) to be Rodolfo – and not Roger – Valeroso.

[1] In the Matter of the Petition for the Writ of Amparo in favor of Rodolfo Noel I. Lozada, Jr., Arturo Lozada v. President Gloria Macapagal-Arroyo, Eduardo Ermita, Avelino Razon, Angel Atutubo and SPO4 Roger Valeroso, CA-G.R. SP No. 00017; In the Matter of the Petition for Issuance of [the] Writ of Habeas Corpus of Rodolfo Noel Lozada, Jr., Rodolfo Noel Lozada, Jr. and Violeta Cruz Lozada, for herself and in representation of Rodolfo Noel Lozada, Jr., v. General Angel Atutubo, General Avelino Razon, Lt. Gen. Pedrio Cadungog, General Octavio Lina, Brig. Gen. Romeo C. Prestoza, and SPO1 Roger Valeroso, CA-G.R. SP No. 102251, 12 September 2008. Penned by CA Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Regalado E. Maambong and Sixto C. Marella, Jr., rollo, pp. 61-144.

[2] Complaint-Affidavit dated 22 February 2008, at 1; rollo, p. 453.

- [3] Petition dated 23 September 2008, at 8; rollo, p. 9.
- [4] Id.
- [5] Id.
- [6] Id.
- [7] Petition, p. 7; rollo, p. 8.
- [8] Id.
- [9] Petition, p. 8; rollo, p. 9.
- [10] Senate Order dated 30 January 2008, CA rollo, pp. 8-10.
- [11] Petition, p. 9; rollo, p. 10.
- [12] Petition, p. 7; rollo, p. 8.
- [13] Petition, pp. 9-10; rollo, pp. 10-11.
- [14] Petition, p. 10; rollo, p. 11.
- [15] Petition, p. 11; rollo, p. 12.
- [16] Id.
- [17] Id.
- [18] Id.
- [19] Id.
- [20] Petition, pp. 11-12; rollo, pp. 12-13.
- [21] Petition, p. 12; rollo, p. 13.
- [22] Id.
- [23] Id.
- [24] Id.
- [25] Petition, p. 13; rollo, p. 14.
- [26] Id.
- [27] Petition, p. 14; rollo, p. 15.
- [28] Id.
- [29] Petition, p. 14; rollo, p. 15; Petition for a Writ of Amparo, CA rollo, pp. 2-7.
- [30] Petition, p. 14; rollo, p. 15.
- [31] Id.
- [32] Id.
- [33] Id.

[34] Petition, p. 15; rollo, p. 16.

[35] Petition, p. 26; rollo, p. 27; Resolution dated 7 February 2008, CA rollo, pp. 11-14.

[36] CA Resolution dated 8 February 2008, CA rollo, pp. 17-19. The Habeas Corpus case was docketed as CA-G.R. SP No. 1022551; the Amparo case, CA-G.R. SP No. 00017.

[37] Manifestation and Motion (in lieu of Comment on the Petition for Issuance of Writ of Habeas Corpus dated 6 February 2008) dated 12 February 2008, CA rollo, pp. 20-25.

[38] CA rollo, p. 22.

[39] Return dated 13 February 2008, rollo, pp. 275-333.

[40] Id.

[41] CA Resolution dated 20 February 2008, p. 3; CA rollo, p. 133.

[42] A.M. No. 07-9-12-SC. Section 2 of the Rule on the Writ of Amparo provides:

Who May File. – The petition may be filed by the aggrieved party or by any qualified person or entity in the following order:

- a. Any member of the immediate family, namely: the spouse, children and parents of the aggrieved party;
- b. Any ascendant, descendant or collateral relative of the aggrieved party within the fourth civil degree of consanguinity or affinity, in default of those mentioned in the preceding paragraph; or
- c. Any concerned citizen, organization, association or institution, if there is no known member of the immediate family or relative of the aggrieved party.

The filing of a petition by the aggrieved party suspends the right of all other authorized parties to file similar petitions. Likewise, the filing of the petition by an authorized party on behalf of the aggrieved party suspends the right of all others, observing the order established herein.

[43] Annotation to the Rule on the Writ of Amparo, Supreme Court, p. 4.

[44] CA Resolution dated 20 February 2008, CA rollo, pp.131-136.

[45] CA rollo, pp. 100-114.

[46] Motion for the Issuance of Subpoena dated 22 February 2008, CA rollo, pp.149-156.

[47] Opposition to Petitioner's Motion for Temporary Protection Order and Production of Documents dated 22 February 2008, CA rollo pp.171-180; Opposition to Petitioner's Motion for Issuance of Subpoena Ad Testificandum and Presentation of Hostile Witnesses and Adverse Parties Romulo Neri, Benjamin Abalos, [Sr.], Rodolfo Valeroso, "Jaime" the Driver, and Other Respondents dated 3 March 2008; CA rollo, pp. 240-251.

[48] CA Resolution dated 12 March 2008, CA rollo, pp. 338-344.

[49] CA Resolution dated 8 April 2008, CA rollo, pp. 414-417.

[50] Rollo pp. 468-478; CA rollo, pp. 254-264.

[51] Motion for Reconsideration dated 10 March 2008, CA rollo, pp. 287-303.

[52] CA rollo, pp. 371-374.

[53] CA Decision, rollo, pp. 60-147.

[54] Rollo, pp. 2-59.

[55] Id. at 34-35.

[56] Comment dated 5 November 2008, rollo, pp. 161-274.

[57] Id.

[58] Comment/Opposition (To: Petition for Review) dated 17 November 2008, rollo, pp. 484-504.

[59] Reply to Respondent[s'] Comment dated 26 January 2009, rollo, pp. 510-524; Reply to the Comment of Respondent Atutubo dated 6 February 2009, rollo, pp. 547-564.

[60] Id.

[61] Reply to Respondent[s'] Comment dated 26 January 2009, rollo, pp. 510-524.

[62] Section 1, Rule on the Writ of Amparo; *Rodriguez v. Arroyo*, G.R. Nos. 191805 and 193160.

[63] *Secretary of National Defense v. Manalo*, G.R. No. 180906, 7 October 2008, 568 SCRA 1, 43.

[64] Id. at 38, reiterated in *Reyes v. Court of Appeals*, G.R. No. 182161, 3 December 2009, 606 SCRA 580.

[65] *Tapuz v. Del Rosario*, G.R. 182484, 17 June 2008, 554 SCRA 768, 784.

[66] Id. at 789.

[67] *Rubrico v. Arroyo*, G.R. 183871, 18 February 2010, 613 SCRA 233, 261.

[68] *David v. Arroyo*, 522 Phil. 705, 763-764 (2006).

[69] *Rodriguez v. Arroyo*, G.R. Nos. 191805 and 193160, 15 November 2011, citing *Estrada v. Desierto*, 408 Phil. 194, 242 (2001).

[70] Petition, p. 11; rollo, p. 12.

[71] Petition, p. 14; rollo, p. 15.

[72] 500 Phil. 275 (2005).

[73] Id. at 283-284.

[74] CA Resolution dated 12 March 2008, pp. 4-5; CA rollo, pp. 341-342.

[75] Section 17. Burden of Proof and Standard of Diligence Required. – The parties shall establish their claims by substantial evidence.

The respondent who is a private individual or entity must prove that ordinary diligence as required by applicable laws, rules and regulations was observed in the performance of duty.

The respondent who is a public official or employee must prove that extraordinary diligence as required by applicable laws, rules and regulations was observed in the performance of duty.

The respondent public official or employee cannot invoke the presumption that official duty has been regularly performed to evade responsibility or liability.

Section 18. Judgment. — The court shall render judgment within ten (10) days from the time the petition is

submitted for decision. If the allegations in the petition are proven by substantial evidence, the court shall grant the privilege of the writ and such reliefs as may be proper and appropriate; otherwise, the privilege shall be denied.

[76] *Razon v. Tagitis*, G.R. No. 182498, 3 December 2009, 606 SCRA 598, 688, citing *Ang Tibay v. Court of Industrial Relations*, 69 Phil. 635, 642 (1940).

[77] *Razon v. Tagitis*, G.R. No. 182498, 3 December 2009, 606 SCRA 598, 687.

[78] *Supra* note 66.

[79] *Razon v. Tagitis (Resolution)*, G.R. No. 182498, 16 February 2010, 612 SCRA 685.

[80] *Id.* at 696-697.

[81] *Petition*, p. 11; *rollo*, p. 12.

[82] *CA Decision*, pp. 76-77; *rollo*, pp. 136-137.

[83] *CA Decision*, pp. 79-81; *rollo*, pp. 139-141.

[84] *Reply to Respondent[s'] Comment* dated 26 January 2009, pp. 4-5; *rollo*, pp. 513-514.

[85] G.R. No. 186640, 11 February 2010, 612 SCRA 347, 360.

[86] *Castillo v. Cruz*, G.R. No. 182165, 25 November 2009, 605 SCRA 628, 638.

[87] *Complaint-Affidavit* dated 22 February 2008, *rollo*, pp. 453-467.

[88] *Supra* note 67, at 263-265.

[89] *Supra* note 67; *supra* note 78 at 668.

[90] *Supra* note 85.

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