

## EN BANC

[ G.R. No. 208162, January 07, 2020 ]

**DEVIE ANN ISAGA FUERTES, PETITIONER, VS. THE SENATE OF PHILIPPINES, HOUSE REPRESENTATIVES, THE DEPARTMENT OF JUSTICE (DOJ), DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT (DILG), DEPARTMENT OF BUDGET AND MANAGEMENT, DEPARTMENT OF FINANCE, PEOPLE OF THE PHILIPPINES, THROUGH THE OFFICE OF THE SOLICITOR GENERAL (OSG), OFFICE OF THE CITY PROSECUTOR OF TAYABAS CITY (QUEZON PROVINCE), THE PRESIDING JUDGE OF BRANCH 30, REGIONAL TRIAL COURT (RTC) OF LUCENA CITY, AND HEIRS OF CHESTER PAOLO ABRACIA, RESPONDENT.**

### DECISION

**LEONEN, J.:**

Section 14 , paragraph 4 of the Anti-Hazing Law,<sup>[1]</sup> which provides that an accused's presence during a hazing is *prima facie* evidence of his or her participation, does not violate the constitutional presumption of innocence. This disputable presumption is also not a bill of attainder.

This Court resolves a Petition for Certiorari<sup>[2]</sup> seeking to declare unconstitutional Sections 5 and 14 of the Anti-Hazing Law— specifically, paragraph 4 of Section 14. The paragraph provides that one's presence during the hazing is *prima facie* evidence of participation as a principal, unless proven to have prevented or to have promptly reported the punishable acts to law enforcement authorities if they can, without peril to their person or their family.

Devie Ann Isaga Fuertes (Fuertes) is among the 46 accused in Criminal Case No. 2008-895, pending before Branch 30 of the Regional Trial Court of San Pablo City.<sup>[3]</sup> She and her co-accused had been charged with violating the Anti-Hazing Law, or Republic Act No. 8049, for the death of Chester Paolo Abracia (Abracia) due to injuries he allegedly sustained during the initiation rites of the Tau Gamma Phi Fraternity.<sup>[4]</sup> Fuertes is a member of the fraternity's sister sorority, Tau Gamma Sigma, and was allegedly present at the premises during the initiation rites.<sup>[5]</sup>

Abracia died on or about August 2, 2008 in Tayabas City, Quezon. An Information was filed on October 20, 2008, charging the 46 members of Tau Gamma Phi and Tau Gamma Sigma for violation of Republic Act No. 8049.

The pertinent portion of the Information read:

That on or about the 2<sup>nd</sup> day of August 2008, at Barangay Mate, in the City of Tayabas, Province of Quezon, Philippines, and within the

jurisdiction of this Honorable Court, the above-named accused, all active members of Tau Gamma Phi Fraternity and Tau Gamma Sigma Sorority, acting conspiracy with one another, without prior written notice to the proper school authorities of Manuel S. Enverga University Foundation, Inc. (MSEUF) made seven (7) days prior to aforementioned date and in the absence of the school's assigned representatives during the initiation perform and conduct initiation rite on the person of neophyte and herein deceased victim Chester Paolo Abracia as a prerequisite for his admission into membership in the said fraternity by hazing accomplished through subjection to physical suffering or injury, to wit: by successively hitting his body, using paddle and fist blows, thereby [inflicting] upon him contusion and abrasion located on his chest, abdomen, leg and thigh which resulted to cardio-respiratory arrest secondary to pulmonary embolism and acute myocardial infarction which is the direct and immediate cause of his death thereafter.

That the hazing was committed in the property of Lamberto Villarion O. Pandy situated at Barangay Mate, Tayabas City, a place outside the school premises of Manuel S. Enverga University Foundation, Inc. (MSEUF).

That accused Lamberto Villarion O. Pandy, as owner of the place where the hazing was conducted, acted as accomplice by cooperating in the execution of the offense by failing to take action to prevent the same from happening despite actual knowledge that it will be conducted therein.

CONTRARY TO LAW. Tayabas City for Lucena City, Philippines, October 20, 2008.<sup>[6]</sup>

Fuertes, a member of Tau Gamma Sigma Sorority, admitted that she was at the premises during the initiation rites. She was then 17 years old and was a student of Manuel S. Enverga University Foundation.<sup>[7]</sup>

The case was docketed as Criminal Case No. 2008-895, and was initially pending with Branch 54 of the Regional Trial Court of Lucena City. The case was transferred to Branch 30 of the Regional Trial Court of San Pablo City, pursuant to A.M. No. 10-7-224-RTC issued by this Court in July 2010.<sup>[8]</sup>

On August 1, 2013, Fuertes filed a Petition for Certiorari<sup>[9]</sup> before this Court, raising the sole issue of the unconstitutionality of Sections 3 and 4 of the Anti-Hazing Law. At the time, she had not yet been arraigned and was at large.<sup>[10]</sup>

Petitioner claims that Sections 3 and 4 of the Anti-Hazing Law are unconstitutional, as they would allow for the conviction of persons for a crime committed by others, in violation of the *res inter alios acta* rule. She also argues that these provisions violate Article III, Sections 1 and 19 of the Constitution for constituting a cruel and unusual punishment, as she was charged as a principal, and penalized with *reclusion perpetua*, for a non-bailable offense.<sup>[11]</sup>

On August 6, 2013, this Court issued a Resolution<sup>[12]</sup> requiring respondents to

comment on the Petition.

On November 5, 2013, public respondents filed their Comment,<sup>[13]</sup> arguing that the Petition was procedurally and substantially erroneous,<sup>[14]</sup> for a multitude of reasons.

First, since petitioner assails the constitutionality of law provisions, public respondents argue that her Petition is one of declaratory relief, over which this Court has no original jurisdiction.<sup>[15]</sup> Further, they argue that declaratory relief is not the proper remedy, as there had already been a breach of the Anti-Hazing Law.<sup>[16]</sup>

Second, public respondents claim that petitioner is not entitled to equitable relief, as she has come to court with unclean hands,<sup>[17]</sup> having evaded arrest for five (5) years since being charged. They claim that, while government resources are directed for her arrest, she has remained a fugitive from justice, able to exercise her civil rights.<sup>[18]</sup> They pointed out that on September 6, 2010, she obtained a Philippine passport from the Philippine Embassy in Brunei, and a postal identification card in Pasay in May 2013.<sup>[19]</sup> She also verified the Petition before Atty. Manny V. Gragas in at the Quezon City Hall. Her counsel, Atty. Vicente D. Millora, appears to be in constant contact with her, but has not facilitated her surrender to the authorities.<sup>[20]</sup>

Third, public respondents argue that even if the Rules of Court were applied liberally, petitioner has still failed to overturn the presumption of constitutionality of Sections 3 and 4 of the Anti-Hazing Law. They claim that the presumption in Section 4— that the presence of persons during the hazing is *prima facie* evidence of participation, unless they prevented the commission of the punishable acts—is consistent with Sections 1, 14, and 19 of the Constitution.<sup>[21]</sup> They argue that several penal laws allow for *prima facie* evidence, all of which do not preclude the constitutional presumption of innocence. They also point out that this Court itself recognizes disputable presumptions, as in Rules of Court, Rule 131, Section 3.<sup>[22]</sup>

Moreover, public respondents claim that certain laws, such as the Revised Penal Code, Article 275, penalize presence and inaction.<sup>[23]</sup> They cited *People v. Mingo*<sup>[24]</sup> and *Bautista v. Court of Appeals*.<sup>[25]</sup> in which this Court upheld disputable presumptions in criminal law. <sup>[26]</sup>

Fourth, public respondents argue that there is no violation of the *res inter alios acta* rule, because under the assailed law, there must still be a finding of actual participation before a person may be held criminally liable.<sup>[27]</sup>

Fifth, public respondents claim that the penalty of *reclusion perpetua* that will be imposed is not cruel and unusual punishment. They argue that; consistent with *Furman v. Georgia* <sup>[28]</sup> and *Perez v. People*,<sup>[29]</sup> penalties such as life imprisonment and even death may be imposed to discourage crimes harmful to public interest.<sup>[30]</sup> As for the Anti-Hazing Law itself, *reclusion perpetua* is only imposable on the actual participants in the hazing, and only when the hazing results in death, rape, sodomy, or mutilation.<sup>[31]</sup>

Sixth, public respondents argue that the provision on *prima facie* evidence in the Anti-Hazing Law is a legislative decision that this Court must respect in view of the doctrine of separation of powers.<sup>[32]</sup> They raise that the presumption was put in place in view of the legislative policy to discourage fraternities, sororities, organizations, or associations from making hazing a requirement for admission.<sup>[33]</sup>

Finally, public respondents argue that petitioner's minority and right to bail are matters better left to the judgment of the trial court.<sup>[34]</sup>

On November 19, 2013, this Court issued a Resolution<sup>[35]</sup> noting the Comment, and requiring petitioner to file a Reply.

On January 8, 2014, Fuertes filed her Reply<sup>[36]</sup> to the Comment. On January 21, 2014, this Court issued a Resolution<sup>[37]</sup> noting the Reply. This Court also gave due course to the Petition, treated the Comment as Answer, and required the parties to submit their memoranda.

On April 21, 2014, public respondents filed a Manifestation,<sup>[38]</sup> praying that their Comment be considered their Memorandum.

On April 23, 2014, petitioner filed her Memorandum,<sup>[39]</sup> arguing that while the Information charges all members of Tau Gamma Phi and Tau Gamma Sigma as principals and conspirators for Abracia's death, it failed to allege that all the accused actually participated in the hazing.<sup>[40]</sup>

She insists that Sections 3 and 4 of the Anti-Hazing Law violate Sections 1, 14, and 22 of the Constitution. She claims that the Anti-Hazing Law presumes that there is a conspiracy to commit murder or homicide. Further, the Anti-Hazing Law treats persons as principals or co-conspirators simply because of their presence at an initiation rite, or while they are an active member of the fraternity or sorority, even if one did not know, or actually participate, in the act that caused the crime charged.<sup>[41]</sup> She argues that she and other members of Tau Gamma Sigma should not have been charged, there being no showing that they knew, or actually participated in the hazing which led to the death of Abracia.<sup>[42]</sup>

Petitioner argues that conspiracy must be proved beyond reasonable doubt, and a mere presumption cannot be the basis to file an information for murder <sup>[43]</sup>

She likewise claims that Sections 3 and 4 are a bill of attainder<sup>[44]</sup> — a legislative act declaring persons guilty of a crime without judicial trial— because they treat members of a particular group as principals or co-conspirators, even if they have no actual knowledge or participation in the act.<sup>[45]</sup> She argues that in imposing these provisions, Congress has arrogated judicial power upon itself, since the determination of the degree of participation in a crime is a judicial, and not legislative, function.<sup>[46]</sup>

Finally, petitioner argues that the procedural errors assigned by public respondent deserve scant consideration, and that this Court should set aside technical defects when there is a violation of the Constitution.<sup>[47]</sup>

On June 3, 2014, this Court issued a Resolution<sup>[48]</sup> noting public respondents' Manifestation and petitioner's Memorandum.

In 2018, the Anti-Hazing Law was amended by Republic Act No. 11053. The law now prohibits all forms of hazing in "fraternities, sororities, and organizations in schools, including citizens' military training and citizens' army training[,]" as well as "all other fraternities, sororities, and organizations that are not school-based, such as community-based and other similar fraternities, sororities, and organizations."<sup>[49]</sup> Among the changes were the renumbering of Sections 3 and 4 to Sections 5 and 14, respectively, and their amendments. Section 5 of the Anti-Hazing Law now reads:

SECTION 5. *Monitoring of Initiation Rites.* - The head of the school or an authorized representative must assign at least two (2) representatives of the school to be present during the initiation. It is the duty of the school representatives to see to it that no hazing is conducted during the initiation rites, and to document the entire proceedings. Thereafter, said representatives who were present during the initiation shall make a report of the initiation rites to the appropriate officials of the school regarding the conduct of the said initiation : *Provided, That if hazing is still committed despite their presence, no liability shall attach to them unless it is proven that they failed to perform an overt act to prevent or stop the commission thereof.*

The pertinent paragraph of Section 14 was amended to include the additional defense of prompt reporting of the hazing to law enforcement authorities:

The presence of any person, even if such person is not a member of the fraternity, sorority, or organization, during the hazing is *prima facie* evidence of participation therein as a principal unless such person or persons prevented the commission of the acts punishable herein or *promptly reported the same to the law enforcement authorities if they can do so without peril to their person or their family.* (Emphasis supplied)

Moreover, under Section 14, when death occurs during the hazing, the penalty imposed on principals who participated in it was increased from just *reclusion perpetua* to *reclusion perpetua* and a P3-million fine.

Accordingly, this Court required the parties to move in the premises as to whether the law's passage affects this case.<sup>[50]</sup>

To public respondents, the passage of Republic Act No. 11053 did not render this case moot.<sup>[51]</sup> They point out that petitioner did not raise issues on the penalty imposed or the defenses that may be presented, only the *prima facie* presumption in Section 14.<sup>[52]</sup>

Moreover, petitioners claim that, while the additional imposable fine is disadvantageous to petitioner, she may avail of the second defense provided in the amendment, which benefits her. They add that the additional penalty cannot retroactively apply to petitioner since it will disadvantage her. Further, they submit