

## EN BANC

[ G.R. No. 221862, January 23, 2018 ]

**GEN. EMMANUEL BAUTISTA, IN HIS CAPACITY AS THE CHIEF OF STAFF OF THE ARMED FORCES OF THE PHILIPPINES (AFP), GEN. EDUARDO AÑO, IN HIS CAPACITY AS COMMANDING OFFICER OF THE INTELLIGENCE SERVICE OF THE ARMED FORCES OF THE PHILIPPINES (ISAFP), GEN. HERNANDO IRIBERRI, IN HIS CAPACITY AS COMMANDING GENERAL OF THE PHILIPPINE ARMY, GEN. BENITO ANTONIO T. DE LEON, IN HIS CAPACITY AS COMMANDING GENERAL OF THE 5TH INFANTRY DIVISION, AND PC/SUPT. MIGUEL DE MAYO LAUREL, IN HIS CAPACITY AS CHIEF OF THE ISABELA PROVINCIAL POLICE OFFICE, PETITIONERS, V. ATTY. MARIA CATHERINE DANNUG-SALUCON, RESPONDENT.**

### DECISION

#### **BERSAMIN, J.:**

The privilege of the writ of *amparo* may be granted on the basis of the application of the totality of evidence standard. Such application may extend to the use of relevant circumstantial evidence. Hearsay testimony that is consistent with the admissible evidence adduced may also be admitted and appreciated. The flexibility in the admission of evidence derives from the recognition of the State's often virtual, monopoly of access to pertinent evidence, as well as from the recognition of the deliberate use of the State's power to destroy pertinent evidence being inherent in the practice of enforced disappearances.

#### **The Case**

By petition for review on *certiorari*,<sup>[1]</sup> the petitioners, namely: Gen. Emmanuel Bautista, Gen. Eduardo Año, Gen. Hernando Iriberry, Gen. Benito Antonio T. De Leon, and Chief Supt. Miguel De Mayo Laurel, hereby assail the decision promulgated on March 12, 2015 in CA-G.R. SP No. 00053-W/A,<sup>[2]</sup> whereby the Court of Appeals (CA) granted the privilege of the writs of *amparo* and *habeas data* in favor of respondent Atty. Maria Catherine Dannug-Salucon (Atty. Salucon), the petitioner thereat, as well as the resolution promulgated on December 2, 2015,<sup>[3]</sup> whereby the CA denied their motion for reconsideration.

#### **Antecedents**

After her admission to the Philippine Bar, Atty. Salucon initially worked for the Public Attorney's Office (PAO) before resigning to become a human rights advocate. She co-founded the National Union of People's Lawyers (NUPL), a national association of human rights advocates, law students and paralegals principally engaged in public interest cases and human rights advocacy. She also established her own law firm, and undertook the defense of several political detainees, most of whom were leaders or members of peasant and other sectoral organizations and people's

organizations, including human rights defenders labeled or suspected to be members of the Communist Party of the Philippines (CPP) or the New People's Army (NPA) who had been harassed with allegedly trumped-up charges by the agents of the Government.

For purposes of this adjudication, we adopt the CA's summary of the factual antecedents derived from Atty. Salucon's petition for the issuance of the writs of *amparo* and *habeas data*, to wit:

On March 24, 2014, [respondent] was at a lunch meeting with the relatives of a detained political prisoner client who was allegedly among several leaders of people's organizations/sectoral organizations who were falsely charged in a murder and frustrated murder case pending before the Regional Trial Court (RTC) of Lagawe, Ifugao. As they were discussing the security risks involved in the handling of the case, William Bugatti, her paralegal who was working with her on said case and who was also an activist and human rights defender, informed her that he had personally observed that surveillance was being conducted on them, including the respondent, especially during hearings for the above case. Thus, he suggested certain security measures for her own protection. [Respondent] realized the significance of Bugatti's advice when he was fatally gunned down later that evening. Parenthetically, [respondent] had asked him (sic) early that very day to identify the names, ranks and addresses of the handler/s of the prosecution witness in the Lagawe case, whom [respondent] suspected of lying on the witness stand.

That same evening, [respondent] was informed by a client x x x working as a civilian asset for the PNP Intelligence Section that the Regional Intelligence of the PNP, through the PNP Isabela Provincial Police Office, had issued a directive to PNP Burgos, Isabela, [respondent's] hometown, to conduct a background investigation on her and to confirm whether she was a "Red Lawyer". She also learned that she was being secretly followed by agents of the Intelligence Service of the Armed Forces of the Philippines (ISAFP) and that person looking like military/policemen had been asking people around her office about her whereabouts and routine. Further, respondent's name was reportedly included in the military's Watch List of so-called communist terrorist supporters rendering legal services.

On March 31, 2014, [respondent] again received a call from her confidential informant, confirming that she was indeed the subject of surveillance and that, in fact, he was tailed by ISAFP operatives when he came to [respondent's] office a few nights earlier. The day before, the confidential informant was allegedly cornered by three ISAFP operatives who interrogated him on the purpose of his visit to respondent's office. They also asked him why respondent was acquainted with known NPA members such as Randy Malayao and Grace Bautista, and why she was always the lawyer of several suspected communist terrorists.

Upon further investigation, respondent discovered the following things:

- 1) On or about March 12, 19 and 21, 2014, when [respondent] had out-of-town hearings, different individuals riding on motorcycles and appearing to be

soldiers approached one of the *buko* and *tupig* vendors in front of [respondent's] office. Each of them similarly questioned the vendors as to where [respondent] went, with whom, what time she usually returned to the office and who stayed behind in the office whenever she left. The vendor was surprised because the questions of the individuals were uniform on all occasions and they did not go into [respondent's] office despite the vendor's advice for them to talk to [respondent's] secretary. The above incidents were narrated to [respondent] by her driver, Regie Lutao Gamongan, who had gotten the information from the vendor.

- 2) On March 31, 2014, a member of the Criminal Investigation Service (CIS) of the Criminal Investigation Detection Group (CIDG) came to the law office, asking for the [respondent], but without telling her secretary why he was looking for her. Upon learning that she was not there, he left, then returned again in the afternoon. However, he left again upon finding out that [respondent] had decided to stay at the Hall of Justice longer than expected.
- 3) On the same day, [respondent] received a text message from the Chief Investigator of the CIDG, asking for a copy of the records of a human rights case involving three Bayan Muna members who were allegedly arbitrarily arrested on the basis of trumped up charges for two counts of frustrated murder and tortured in the hands of the 86th Infantry Battalion intelligence operatives. Said case was dismissed by the Office of the Provincial Prosecutor during preliminary investigation. [Respondent] was surprised at the request because it was the third time that the investigator was requesting for a copy of the records and he could have easily secured the same from the Provincial Prosecutor's Office. Thus, [respondent] ignored the text message.
- 4) On or about 7:30 AM on April 3, 2014, while [respondent's] driver, Gamongan, was waiting for her in front of her residence at Poblacion, Burgos, Isabela, a red "Wave" motorcycle with its plate number cased inside a tinted plastic cover, making it impossible to read the same, passed by their house. The motorcycle driver, who was of medium height, with dark complexion, a haircut and demeanor of a military/policeman, with a tattoo on his left, wearing a white sando shirt and with a pistol bag slung around his shoulder, looked intently at Gamongan as he passed by, "as if he wanted to do something wrong". After passing by the [respondent's]

compound, the motorcycle rider suddenly made a u-turn and stared intently at Gamongan as he passed by. As he headed towards the highway, Gamongan noticed that the man was continually observing him through the side mirror. In relation to this incident, witness Gamongan executed a Judicial Affidavit and testified during the trial proceedings.

- 5) On or about April 7 and 10, 2013, soldiers came to [respondent's] office in the guise of asking her to notarize documents. Since [respondent] was on out-of-town hearings, her secretary suggested names of other available notaries public. However, instead of leaving right away, the military men asked where [respondent] went and with whom, and insisted on leaving the document and picking it up later on when [respondent] arrived.
- 6) On April 10, 2014, a known civilian asset of the Military Intelligence Group (MIG) in Isabela, who also happened to be the "close-in" secretary and part-time driver of an uncle who was a municipal circuit judge, came to [respondent's] office, trying to convince her to meet with the head of the MIG Isabela so that the latter could explain why [respondent] was being watched. However, [respondent] declined. The following day, the civilian asset returned and told her that she was being watched by the MIG because of a land dispute which she was handling at a court in Roxas, Isabela. [Respondent] did not believe him because, just a couple of days prior to that date, the MIG operatives had talked to the client/confidential informant who had first informed [respondent] of the purported surveillance operations on her, asking for [respondent's] phone number and inviting him to join them as civilian asset in their anti-insurgency operations.<sup>[4]</sup>

In her petition, thus, [respondent] posited that the above-described acts, taking into consideration previous incidents where human rights lawyers, human rights defenders, political activists and defenders, were killed or abducted after being labeled as "communists" and being subjected to military surveillance, may be interpreted as preliminary acts leading to the abduction and/or killing of [respondent]. Moreover, while [respondent] admitted that the purported military and police operatives who conducted, and were still conducting, surveillance and harassments on [respondent] were still unidentified, she maintained that the same were identified as members of the ISAFP, the Philippine Army and the police, and that there was no doubt that they all acted upon orders of their superiors within the chain of command. [Respondent] reported the incidents to the NUPL and the human rights group KARAPATAN (Alliance for the Advancement of People's Rights), who agreed to help her in filing

the instant petition. She also tried reporting the incidents to the National Bureau of Investigation (NBI) in Isabela, but, as of present, no positive report had been made identifying the individuals who conducted the alleged surveillance, although available information specifically pointed to the military and police units as the ones doing the surveillance.<sup>[5]</sup>

We also adopt the CA's summary of the petitioners' averments, as follows:

[Petitioners] categorically denied [respondent's] allegations that she was ever under surveillance by the military and/or police under the command of [petitioners'] officials. x x x

xxx [Petitioners] also objected to the impleading of other [petitioners] in their official capacities, allegedly under the doctrine of command responsibility. [Petitioners] maintained that the doctrine of command responsibility is a substantive rule that establishes criminal or administrative liability that is different from the purpose and approach under the Rule on the Writ of *Amparo*. Thus, it can only be invoked in a full-blown criminal or administrative case and not in a summary *amparo* proceeding.

x x x x

[Petitioners] [also] alleged that upon receipt of the CA Resolution promulgated on April 22, 2014 x x x, they immediately exerted efforts to conduct an inquiry and to gather information about the purported threats on the life, liberty and security of the [respondent], to wit:

1. [Respondent] Secretary Gazmin maintained that, aside from sweeping allegations of surveillance and gathering of information made by alleged unidentified operatives from the military and the police on [respondent], the latter failed to particularize the instances of [petitioner] Sec. Gazmin's involvement in said surveillance and information gathering that would warrant his inclusion as party [respondent] in the case;
2. Upon receipt of the CA's April 22, 2014 *Resolution*, [petitioner] Gen. Emmanuel T. Bautista issued a directive to the ISAFP Chief and Commander of the 5<sup>th</sup> Infantry Division to verify the alleged surveillance operations conducted on [respondent]. In addition, he enjoined the concerned unit/s to immediately investigate and/or submit to the Higher Headquarters pertinent investigation results already conducted, if any, relative to the complained acts. Finally, [petitioner] Gen. Bautista affirmed the continuation of efforts to establish the surrounding circumstances of [respondent's] allegations and to bring those responsible, including any military personnel, if shown to have participated or to have had complicity in the commission of the alleged acts, to the court of justice.
3. [Petitioner] Major Gen. Eduardo M. Año denied the ISAFP's involvement in the alleged surveillance operations on and harassment of [respondent], and the inclusion of [petitioner's] name in an alleged watchlist. In fact, petitioner Major Gen. Año