

EN BANC

[G.R. No. 234608, July 03, 2018]

**ARVIN R. BALAG, PETITIONER, V. SENATE OF THE PHILIPPINES,
SENATE COMMITTEE ON PUBLIC ORDER AND DANGEROUS
DRUGS, SENATE COMMITTEE ON JUSTICE AND HUMAN RIGHTS,
SENATE COMMITTEE ON CONSTITUTIONAL AMENDMENTS AND
REVISION OF CODES AND MGEN. JOSE V. BALAJADIA, JR. (RET.)
IN HIS CAPACITY AS SENATE SERGEANT-AT-ARMS,
RESPONDENTS.**

D E C I S I O N

GESMUNDO, J.:

This is a petition for *certiorari* and prohibition with prayer for issuance of a temporary restraining order (*TRO*) and/or writ of preliminary injunction seeking to annul, set aside and enjoin the implementation of Senate P.S. Resolution (*SR*) No. 504^[1] and the October 18, 2017 Order^[2] (*Contempt Order*) of the Senate Committee on Public Order and Dangerous Drugs citing Arvin Balag (*petitioner*) in contempt.

The Antecedents

On September 17, 2017, Horacio Tomas T. Castillo III (*Horacio III*),^[3] a first year law student of the University of Sto. Tomas (*UST*), died allegedly due to hazing conducted by the Aegis Juris Fraternity (*AJ Fraternity*) of the same university.

On September 19, 2017, SR No. 504,^[4] was filed by Senator Juan Miguel Zubiri (*Senator Zubiri*)^[5] condemning the death of Horacio III and directing the appropriate Senate Committee to conduct an investigation, in aid of legislation, to hold those responsible accountable.

On September 20, 2017, SR No. 510, entitled: "A Resolution Directing the Appropriate Senate Committees to Conduct An Inquiry, In Aid of Legislation, into the Recent Death of Horacio Tomas Castillo III Allegedly Due to Hazing-Related Activities" was filed by Senator Paolo Benigno Aquino IV.^[6]

On the same day, the Senate Committee on Public Order and Dangerous Drugs chaired by Senator Panfilo Lacson (*Senator Lacson*) together with the Committees on Justice and Human Rights and Constitutional Amendment and Revision of Codes, invited petitioner and several other persons to the Joint Public Hearing on September 25, 2017 to discuss and deliberate the following: Senate Bill Nos. 27,^[7] 199,^[8] 223,^[9] 1161,^[10] 1591,^[11] and SR No. 504.

Petitioner, however, did not attend the hearing scheduled on September 25, 2017. Nevertheless, John Paul Solano, a member of AJ Fraternity, Atty. Nilo T. Divina, Dean

of UST Institute of Civil Law and Arthur Capili, UST Faculty Secretary, attended the hearing and were questioned by the senate committee members.

On the same date, Spouses Carmina T. Castillo and Horacio M. Castillo, Jr. (*Spouses Castillo*), parents of Horacio III, filed a Criminal Complaint^[12] for Murder and violation of Section 4 of Republic Act (R.A.) No. 8049,^[13] before the Department of Justice (DOJ) against several members of the AJ Fraternity, including petitioner. On October 9, 2017, Spouses Castillo filed a Supplemental Complaint-Affidavit^[14] before the DOJ citing the relevant transcripts of stenographic notes during the September 25, 2017 Senate Hearing.

On October 11, 2017, Senator Lacson as Chairman of Senate Committee on Public Order and Dangerous Drugs, and as approved by Senate President Aquilino Pimentel III, issued a Subpoena *Ad Testificandum*^[15] addressed to petitioner directing him to appear before the committee and to testify as to the subject matter under inquiry.^[16] Another Subpoena *Ad Testificandum*^[17] was issued on October 17, 2017, which was received by petitioner on the same day, requiring him to attend the legislative hearing on October 18, 2017.

On said date, petitioner attended the senate hearing. In the course of the proceedings, at around 11:29 in the morning, Senator Grace Poe (*Senator Poe*) asked petitioner if he was the president of AJ Fraternity but he refused to answer the question and invoked his right against self-incrimination. Senator Poe repeated the question but he still refused to answer. Senator Lacson then reminded him to answer the question because it was a very simple question, otherwise, he could be cited in contempt. Senator Poe retorted that petitioner might still be clinging to the supposed "Code of Silence" in his alleged text messages to his fraternity. She manifested that petitioner's signature appeared on the application for recognition of the AJ Fraternity and on the organizational sheet, indicating that he was the president. Petitioner, again, invoked his right against self-incrimination. Senator Poe then moved to cite him in contempt, which was seconded by Senators Joel Villanueva (*Senator Villanueva*) and Zubiri. Senator Lacson ruled that the motion was properly seconded, hence, the Senate Sergeant-at-arms was ordered to place petitioner in detention after the committee hearing. Allegedly, Senator Lacson threatened to order the detention of petitioner in Pasay City Jail under the custody of the Senate Sergeant-at-arms and told him not to be evasive because he would be merely affirming school records.

A few minutes later, at around 12:09 in the afternoon, Senators Lacson and Poe gave petitioner another chance to purge himself of the contempt charge. Again, he was asked the same question twice and each time he refused to answer.^[18]

Thereafter, around 1:19 in the afternoon, Senator Villanueva inquired from petitioner whether he knew whose decision it was to bring Horacio III to the Chinese General Hospital instead of the UST Hospital. Petitioner apologized for his earlier statement and moved for the lifting of his contempt. He admitted that he was a member of the AJ Fraternity but he was not aware as to who its president was because, at that time, he was enrolled in another school.

Senator Villanueva repeated his question to petitioner but the latter, again, invoked his right against self-incrimination. Petitioner reiterated his plea that the contempt order be lifted because he had already answered the question regarding his

membership in the AJ Fraternity. Senator Villanueva replied that petitioner's contempt would remain. Senator Lacson added that he had numerous opportunities to answer the questions of the committee but he refused to do so. Thus, petitioner was placed under the custody of the Senate Sergeant-at-arms. The Contempt Order reads:

RE: PRIVILEGE SPEECH OF SEN. JUAN MIGUEL ZUBIRI ON THE DEATH OF HORATIO "ATIO" CASTILLO III DUE TO HAZING DELIVERED ON 20 SEPTEMBER 2017;

PS RES. NO. 504: RESOLUTION CONDEMNING IN THE STRONGEST SENSE THE DEATH OF FRESHMAN LAW STUDENT HORATIO TOMAS CASTILLO III AND DIRECTING THE APPROPRIATE SENATE COMMITTEES TO CONDUCT AN INVESTIGATION, IN AID OF LEGISLATION, TO HOLD ACCOUNTABLE THOSE RESPONSIBLE FOR THIS SENSELESS ACT (SEN. ZUBIRI); AND

SENATE BILLS NOS. 27, 199, 223, 1161, AND 1591.

xxx

For testifying falsely and evasively before the Committee on [October 18, 2017] and thereby delaying, impeding and obstructing the inquiry into the death of Horacio "Atio" Castillo III. Thereupon the motion of Senator Grace Poe and seconded by Senator Joel Villanueva and Senator Juan Miguel Zubiri, the Committee hereby cites MR. ARVIN BALAG in contempt and ordered arrested and detained at the Office of the Sergeant at-Arms until such time that he gives his true testimony, or otherwise purges himself of that contempt.

The Sergeant-at-Arms is hereby directed to carry out and implement this Order and make a return hereof within twenty-four (24) hours from its enforcement.

SO ORDERED.^[19]

Hence, this petition.

ISSUE

WHETHER RESPONDENT SENATE COMMITTEES ACTED WITH GRAVE ABUSE OF DISCRETION IN CONDUCTING THE LEGISLATIVE INQUIRY AND CITING PETITIONER IN CONTEMPT.

Petitioner chiefly argues that the legislative inquiry conducted by respondent committees was not in aid of legislation; rather, it was in aid of prosecution. He posits that the purpose of SR No. 504 was to hold accountable those responsible for the senseless act of killing Horacio III, and not to aid legislation. Petitioner underscores that the transcripts during the September 25, 2017 committee hearing were used in the criminal complaint filed against him, which bolsters that the said hearings were in aid of prosecution. He insists that the senate hearings would violate his right to due process and would pre-empt the findings of the DOJ with respect to the criminal complaint filed against him.

Petitioner also asserts that he properly invoked his right against self incrimination as the questions propounded by Senator Poe regarding the officers, particularly the presidency of the AJ Fraternity, were incriminating because the answer thereto involves an element of the crime of hazing. Despite the questions being incriminating, he, nonetheless, answered them by admitting that he was a member of the AJ Fraternity but he did not know of its current president because he transferred to another school. He adds that his right to equal protection of laws was violated because the other resource persons who refused to answer the questions of the Senate committees were not cited in contempt.

Finally, petitioner prays for the issuance of TRO and/or writ of preliminary injunction because the Senate illegally enforced and executed SR No. 504 and the Contempt Order, which caused him grave and irreparable injury as he was deprived of his liberty without due process of law. He contends that respondents did not exercise their power of contempt judiciously and with restraint.

In their Comment,^[20] respondents, through the Office of the Senate Legal Counsel, countered that the purpose of the hearing was to re-examine R.A. No. 8049; that several documents showed that the legislative hearing referred to Senate Bill Nos. 27, 199, 223, 1161, and 1591; that the statement of the senators during the hearing demonstrated that the legislative inquiry was conducted in aid of legislation; and that the Senate Rules of Procedure Governing Inquiries in Aid of Legislation (*Senate Rules*) were duly published.

Respondents emphasized that petitioner was first asked on October 18, 2017, around 11:29 in the morning, whether he was the president of the AJ Fraternity, based on school records, and he denied it; he was asked again at 12:09 in the afternoon whether he was the president of the AJ Fraternity but he still refused to answer the question; at 1:19 in the afternoon, he admitted that he was a member of the fraternity but still he refused to say whether or not he was the president, only saying that he is already studying in another school. On November 6, 2017, at the resumption of the hearing, petitioner was still unresponsive. According to respondents, these acts were contemptuous and were valid reasons to cite petitioner in contempt.

Respondents highlighted that there were numerous documents showing that petitioner was the president of the AJ Fraternity but he continually refused to answer. They added that petitioner cannot purge himself of contempt by continually lying.

Further, respondents underscored that the question propounded to petitioner was not incriminating because an admission that he was an officer of the AJ Fraternity would not automatically make him liable under R.A. No. 8049. They emphasized that the Senate respected petitioner's right to due process because the hearing was conducted in aid of legislation; that the senators explained why he would be cited in contempt; that he was given several chances to properly purge himself from contempt; and that no incriminating question was asked. Respondents concluded that there was no violation of petitioner's right to equal protection of laws because the other resource persons did not invoke their right against self-incrimination when asked if they were the officers of the AJ Fraternity.

Respondents likewise explained that the legislative inquiry in aid of legislation may still continue in spite of any pending criminal or administrative cases or

investigation. They countered that the actions for *certiorari* and prohibition were not proper because there were existing remedies that petitioner could have availed of, particularly: a motion to reverse the contempt charge filed within 7 days under Section 18 of the Senate Rules; and a petition for *habeas corpus* as petitioner ultimately would seek for his release from detention.

Finally, respondents asserted that the recourse for the issuance of TRO and/or writ of preliminary injunction was not proper because petitioner was actually asking to be freed from detention, and this was contemplated under a *status quo ante order*. For invoking the wrong remedy, respondents concluded that a TRO and/or writ of preliminary injunction should not be issued.

In its Resolution^[21] dated December 12, 2017, the Court ordered in the interim the immediate release of petitioner pending resolution of the instant petition.

In its Manifestation^[22] dated February 20, 2018, respondents stated that on January 23, 2018, the Committees on Public Order and Dangerous Drugs and Justice and Human Rights jointly submitted Committee Report Nos. 232 and 233 recommending that Senate Bill No. 1662 be approved in substitution of Senate Bill Nos. 27, 199, 223, 1161, 1591, and 1609. The said committee reports were approved by the majority of their members.^[23] On February 12, 2018, the Senate passed on 3rd reading Senate Bill No. 1662, entitled: An Act Amending Republic Act No. 8049 to Strengthen the Law on Hazing and Regulate Other Forms of Initiation Rites of Fraternities, Sororities, and Other Organizations, Providing Penalties Therefor, and for Other Purposes, with its short title as "Anti-Hazing Act of 2018."

The Court's Ruling

The petition is moot and academic.

The existence of an actual case or controversy is a necessary condition precedent to the court's exercise of its power of adjudication. An actual case or controversy exists when there is a conflict of legal rights or an assertion of opposite legal claims between the parties that is susceptible or ripe for judicial resolution. In the negative, a justiciable controversy must neither be conjectural nor moot and academic. There must be a definite and concrete dispute touching on the legal relations of the parties who have adverse legal interests. The reason is that the issue ceases to be justiciable when a controversy becomes moot and academic; otherwise, the court would engage in rendering an advisory opinion on what the law would be upon a hypothetical state of facts.^[24]

In this case, the Court finds that there is no more justiciable controversy. Petitioner essentially alleges that respondents unlawfully exercised their power of contempt and that his detention was invalid. As discussed earlier, in its resolution dated December 12, 2017, the Court ordered in the interim the immediate release of petitioner pending resolution of the instant petition. Thus, petitioner was no longer detained under the Senate's authority.

Then, on January 23, 2018, the Committees on Public Order and Dangerous Drugs and Justice and Human Rights jointly adopted Committee Report Nos. 232 and 233 and submitted the same to the Senate. Committee Report No. 232 referred to the findings of respondent committees in the inquiry conducted in aid of legislation; while Committee Report No. 233 referred to the recommendation that Senate Bill