

## EN BANC

[ G.R. Nos. 184461-62, May 31, 2011 ]

**LT. COL. ROGELIO BOAC, LT. COL. FELIPE ANOTADO AND LT. FRANCIS MIRABELLE SAMSON, PETITIONERS, VS. ERLINDA T. CADAPAN AND CONCEPCION E. EMPEÑO, RESPONDENTS.**

[G.R. NO. 184495]

**ERLINDA T. CADAPAN AND CONCEPCION E. EMPEÑO, PETITIONERS, VS. GEN. HERMOGENES ESPERON, P/DIR.GEN. AVELINO RAZON, (RET.) GEN. ROMEO TOLENTINO, (RET.) GEN. JOVITO PALPARAN, LT. COL. ROGELIO BOAC, LT. COL. FELIPE ANOTADO, ET AL., RESPONDENTS.**

[G.R. NO. 187109 ]

**ERLINDA T. CADAPAN AND CONCEPCION E. EMPEÑO, PETITIONERS, VS. GLORIA MACAPAGAL-ARROYO, GEN. HERMOGENES ESPERON, P/DIR.GEN. AVELINO RAZON, (RET.) GEN. ROMEO TOLENTINO, (RET.) GEN. JOVITO PALPARAN, LT. COL. ROGELIO BOAC, LT. COL. FELIPE ANOTADO, DONALD CAIGAS, A.K.A. ALAN OR ALVIN, ARNEL ENRIQUEZ AND LT. FRANCIS MIRABELLE SAMSON, RESPONDENTS.**

## D E C I S I O N

### **CARPIO MORALES, J.:**

At 2:00 a.m. of June 26, 2006, armed men abducted Sherlyn Cadapan (Sherlyn), Karen Empeño (Karen) and Manuel Merino (Merino) from a house in San Miguel, Hagonoy, Bulacan. The three were herded onto a jeep bearing license plate RTF 597 that sped towards an undisclosed location.

Having thereafter heard nothing from Sherlyn, Karen and Merino, their respective families scoured nearby police precincts and military camps in the hope of finding them but the same yielded nothing.

On July 17, 2006, spouses Asher and Erlinda Cadapan and Concepcion Empeño filed a petition for *habeas corpus*<sup>[1]</sup> before the Court, docketed as **G.R. No. 173228**, impleading then Generals Romeo Tolentino and Jovito Palparan (Gen. Palparan), Lt. Col. Rogelio Boac (Lt. Col. Boac), Arnel Enriquez and Lt. Francis Mirabelle Samson (Lt. Mirabelle) as respondents. By Resolution of July 19, 2006,<sup>[2]</sup> the Court issued a writ of *habeas corpus*, returnable to the Presiding Justice of the Court of Appeals.

The *habeas corpus* petition was docketed at the appellate court as **CA-G.R. SP No. 95303**.

By Return of the Writ dated July 21, 2006,<sup>[3]</sup> the respondents in the *habeas corpus* petition denied that Sherlyn, Karen and Merino are in the custody of the military. To the Return were attached affidavits from the respondents, except Enriquez, who all attested that they do not know Sherlyn, Karen and Merino; that they had inquired from their subordinates about the reported abduction and disappearance of the three but their inquiry yielded nothing; and that the military does not own nor possess a stainless steel jeep with plate number RTF 597. Also appended to the Return was a certification from the Land Transportation Office (LTO) that plate number RTF 597 had not yet been manufactured as of July 26, 2006.

Trial thereupon ensued at the appellate court.

Witness **Wilfredo Ramos**, owner of the house where the three were abducted, recounted that on June 26, 2006, while he was inside his house in Hagonoy, he witnessed armed men wearing bonnets abduct Sherlyn and Karen from his house and also abduct Merino on their way out; and that tied and blindfolded, the three were boarded on a jeep and taken towards Iba in Hagonoy.<sup>[4]</sup>

Witness **Alberto Ramirez** (Ramirez) recalled that on June 28, 2006, while he was sleeping in his house, he was awakened by Merino who, in the company of a group of unidentified armed men, repaired to his house; that onboard a stainless jeep bearing plate number RTF 597, he (Ramirez) was taken to a place in Mercado, Hagonoy and was asked by one Enriquez if he knew "Sierra," "Tanya," "Vincent" and "Lisa"; and that Enriquez described the appearance of two ladies which matched those of Sherlyn and Karen, whom he was familiar with as the two had previously slept in his house.<sup>[5]</sup>

Another witness, **Oscar Leuterio**, who was himself previously abducted by armed men and detained for five months, testified that when he was detained in Fort Magsaysay in Nueva Ecija, he saw two women fitting the descriptions of Sherlyn and Karen, and also saw Merino, his *kumpare*.<sup>[6]</sup>

**Lt. Col. Boac**, the then commander of Task Force Malolos, a special operations team tasked to neutralize the intelligence network of communists and other armed groups, declared that he conducted an inquiry on the abduction of Sherlyn, Karen and Merino but his subordinates denied knowledge thereof.<sup>[7]</sup>

While he denied having received any order from Gen. Palparan to investigate the disappearance of Sherlyn, Karen and Merino, his assistance in locating the missing persons was sought by the mayor of Hagonoy.

**Major Dominador Dingle**, the then division adjutant of the Philippine Army's 7<sup>th</sup> Infantry Division in Fort Magsaysay, denied that a certain Arnel Enriquez is a member of his infantry as in fact his name did not appear in the roster of troops.<sup>[8]</sup>

**Roberto Se**, a supervisor of the Equipment, Plate Number and Supply Units of the LTO, denied that his office manufactured and issued a plate number bearing number RTF 597.<sup>[9]</sup>

*On rebuttal*, Lt. Mirabelle, Lt. Col. Boac and Gen. Palparan took the witness stand as hostile witnesses.

**Lt. Mirabelle** testified that she did not receive any report on the abduction of Sherlyn, Karen and Merino nor any order to investigate the matter. And she denied knowing anything about the abduction of Ramirez nor who were *Ka Tanya* or *Ka Lisa*.<sup>[10]</sup>

**Gen. Palparan** testified that during a debate in a televised program, he mentioned the names of *Ka Lisa* and *Ka Tanya* as the ones involved in revolutionary tax activities; and that he ordered Lt. Col. Boac to conduct an investigation on the disappearance of Sherlyn, Karen and Merino.<sup>[11]</sup> When pressed to elaborate, he stated: *"I said that I got the report that it stated that it was Ka Tanya and Ka Lisa that, I mean, that incident happened in Hagonoy, Bulacan was the abduction of Ka Lisa and Ka Tanya, Your Honor, and another one. That was the report coming from the people in the area."*<sup>[12]</sup>

By Decision of March 29, 2007,<sup>[13]</sup> the Court of Appeals dismissed the *habeas corpus* petition in this wise:

As Sherlyn Cadapan, Karen Empeño and Manuel Merino are indeed missing, **the present petition for *habeas corpus* is not the appropriate remedy since the main office or function of the *habeas corpus* is to inquire into the legality of one's detention which presupposes that respondents have actual custody of the persons subject of the petition.** The reason therefor is that the courts have limited powers, means and resources to conduct an investigation. x x x.

It being the situation, the proper remedy is not a *habeas corpus* proceeding but criminal proceedings by initiating criminal suit for abduction or kidnapping as a crime punishable by law. In the case of *Martinez v. Mendoza*, supra, the Supreme Court restated the doctrine that *habeas corpus* may not be used as a means of obtaining evidence on the whereabouts of a person, or as a means of finding out who has specifically abducted or caused the disappearance of a certain person. (emphasis and underscoring supplied)

Thus the appellate court disposed:

WHEREFORE, the petition for *habeas corpus* is hereby DISMISSED, there being no strong evidence that the missing persons are in the custody of the respondents.

The Court, however, further resolves to **refer the case to the Commission on Human Rights, the National Bureau of Investigation and the Philippine National Police for separate investigations and appropriate actions** as may be warranted by their findings and to **furnish the Court with their separate reports** on the outcome of their investigations and

the actions taken thereon.

Let copies of this decision be furnished the Commission on Human Rights, the National Bureau of Investigation and the Philippine National Police for their appropriate actions.

SO ORDERED. (emphasis and underscoring supplied)

Petitioners in CA-G.R. SP No. 95303 moved for a reconsideration of the appellate court's decision. They also moved to present newly discovered evidence consisting of the testimonies of Adoracion Paulino, Sherlyn's mother-in-law who was allegedly threatened by soldiers; and Raymond Manalo who allegedly met Sherlyn, Karen and Merino in the course of his detention at a military camp.

During the pendency of the motion for reconsideration in CA-G.R. SP No. 95303, Erlinda Cadapan and Concepcion Empeño filed before this Court a Petition for Writ of *Amparo*<sup>[14]</sup> With Prayers for Inspection of Place and Production of Documents dated October 24, 2007, docketed as **G.R. No. 179994**. The petition impleaded the same respondents in the *habeas corpus* petition, with the addition of then President Gloria Macapagal-Arroyo, then Armed Forces of the Phil. (AFP) Chief of Staff Hermogenes Esperon Jr., then Phil. National Police (PNP) Chief Gen. Avelino Razon (Gen. Razon), Lt. Col. Felipe Anotado (Lt. Col. Anotado) and Donald Caigas.

Then President Arroyo was eventually dropped as respondent in light of her immunity from suit while in office.

Petitioners in G.R. No. 179994 also prayed that they be allowed to inspect the detention areas of the following places:

1. 7<sup>th</sup> Infantry Division at Fort Magsaysay, Laur, Nueva Ecija
2. 24<sup>th</sup> Infantry Battalion at Limay, Bataan
3. Army Detachment inside Valmocina Farm, Pinaod, San Ildefonso, Bulacan
4. Camp Tecson, San Miguel, Bulacan
5. The Resthouse of Donald Caigas alias Allan or Alvin of the 24<sup>th</sup> Infantry Battalion at Barangay Banog, Bolinao, Pangasinan
6. 56<sup>th</sup> Infantry Battalion Headquarters at Iba, Hagonoy, Bulacan
7. Army Detachment at Barangay Mercado, Hagonoy, Bulacan
8. Beach House [at] Iba, Zambales used as a safehouse with a retired military personnel as a caretaker;

By Resolution of October 25, 2007, the Court issued in G.R. No. 179994 a writ of *amparo* returnable to the Special Former Eleventh Division of the appellate court, and ordered the consolidation of the *amparo* petition with the pending *habeas corpus* petition.

Docketed as **CA-G.R. SP No. 002**, respondents in the *amparo* case, through the Solicitor General, filed their Return of the Writ on November 6, 2007.<sup>[15]</sup> In the

Return, Gen. Palparan, Lt. Col. Boac and Lt. Mirabelle reiterated their earlier narrations in the *habeas corpus* case.

**Gen. Hermogenes Esperon Jr.** stated in the Return that he immediately caused to investigate and verify the identities of the missing persons and was aware of the earlier decision of the appellate court ordering the police, the Commission on Human Rights and the National Bureau of Investigation to take further action on the matter.  
[16]

**Lt. Col. Felipe Anotado**, the then battalion commander of the 24<sup>th</sup> Infantry Battalion based in Balanga City, Bataan, denied any involvement in the abduction. While the 24<sup>th</sup> Infantry Battalion detachment was reported to be a detention site of the missing persons, Lt. Col. Anotado claimed that he found no untoward incident when he visited said detachment. He also claimed that there was no report of the death of Merino per his inquiry with the local police.  
[17]

**Police Director General Avelino Razon** narrated that he ordered the compilation of pertinent records, papers and other documents of the PNP on the abduction of the three, and that the police exhausted all possible actions available under the circumstances.  
[18]

In addition to the witnesses already presented in the *habeas corpus* case, petitioners called on Adoracion Paulino and Raymond Manalo to testify during the trial.

**Adoracion Paulino** recalled that her daughter-in-law Sherlyn showed up at home on April 11, 2007, accompanied by two men and three women whom she believed were soldiers. She averred that she did not report the incident to the police nor inform Sherlyn's mother about the visit.  
[19]

**Raymond Manalo** (Manalo) claimed that he met the three abducted persons when he was illegally detained by military men in Camp Tecson in San Miguel, Bulacan. His group was later taken to a camp in Limay, Bataan. He recalled that Lt. Col. Anotado was the one who interrogated him while in detention.  
[20]

In his *Sinumpaang Salaysay*,  
[21] Manalo recounted:

x x x x

59. Saan ka dinala mula sa Sapang?

Pagkalipas ng humigit kumulang 3 buwan sa Sapang, dinala ako sa Camp Tecson sa ilalim ng 24<sup>th</sup> IB.

x x x x

Sa loob ng barracks ko nakilala si **Sherlyn Cadapan**, isang estudyante ng UP.