626 Phil. 581

EN BANC

[G.R. No. 182498, February 16, 2010]

GEN. AVELINO I. RAZON, JR., CHIEF, PHILIPPINE NATIONAL POLICE (PNP); POLICE CHIEF SUPERINTENDENT RAUL CASTAÑEDA, CHIEF, CRIMINAL INVESTIGATION AND DETECTION GROUP (CIDG); POLICE SENIOR SUPERINTENDENT LEONARDO A. ESPINA, CHIEF, POLICE ANTI-CRIME AND EMERGENCY RESPONSE (PACER); AND GEN. JOEL R. GOLTIAO, REGIONAL DIRECTOR OF ARMM, PNP, PETITIONERS, VS. MARY JEAN B. TAGITIS, HEREIN REPRESENTED BY ATTY. FELIPE P. ARCILLA, JR., ATTORNEY-IN-FACT, RESPONDENT.

R E S O L U T I O N

BRION, J.:

We resolve in this Resolution the Motion for Reconsideration filed by the petitioners -- Gen. Avelino I. Razon, former Chief of the Philippine National Police (*PNP*);[1] Gen. Edgardo M. Doromal, former Chief of the Criminal Investigation and Detection Group (*CIDG*), PNP;[2] Police Senior Superintendent Leonardo A. Espina, former Chief of the Police Anti-Crime and Emergency Response (PACER), PNP;[3] and Gen. Joel Goltiao, former Regional Director of the PNP-Autonomous Region of Muslim Mindanao[4] (*petitioners*) -- addressing our Decision of December 3, 2009. This Decision affirmed the Court of Appeals' (*CA*) decision of March 7, 2008 confirming the enforced disappearance of Engineer Morced N. Tagitis (*Tagitis*) and granting the Writ of *Amparo.*

Our December 3, 2009 Decision was based, among other considerations, on the finding that Col. Julasirim Ahadin Kasim (*Col. Kasim*) informed the respondent Mary Jean Tagitis (*respondent*) and her friends that her husband had been under surveillance since January 2007 because an informant notified the authorities, through a letter, that Tagitis was a liaison for the JI;[5] that he was "*in good hands*" and under custodial investigation for complicity with the JI after he was seen talking to one Omar Patik and a certain "Santos" of Bulacan, a "Balik Islam" charged with terrorism (*Kasim evidence*).

We considered Col. Kasim's information, together with the consistent denials by government authorities of any complicity in the disappearance of Tagitis, the dismissive approach of the police authorities to the report of the disappearance, as well as the haphazard investigations conducted that did not translate into any meaningful results, to be indicative of government complicity in the disappearance of Tagitis (for purposes of the Rule on the Writ of *Amparo*).

We explained that although the Kasim evidence was patently hearsay (and was thus incompetent and inadmissible under our rules of evidence), the unique evidentiary

difficulties posed by enforced disappearance cases compel us to adopt standards that were appropriate and responsive to the evidentiary difficulties faced. We noted that while we must follow the substantial evidence rule, we must also observe *flexibility* in considering the evidence that we shall take into account. Thus, we introduced a new evidentiary standard for Writ of *Amparo* cases in this wise:

> The fair and proper rule, to our mind, is to consider all the pieces of evidence adduced in their totality, and to consider any evidence otherwise inadmissible under our usual rules to be admissible if it is consistent with the admissible evidence adduced. In other words**, we reduce our rules to the most basic test of reason - i.e., to the relevance of the evidence to the issue at hand and its consistency with all the other pieces of adduced evidence, Thus, even hearsay evidence can be admitted if it satisfies this minimum test.** [Emphasis in the original]

We held further that the Kasim evidence was crucial to the resolution of the present case for two reasons: *first*, it supplied the gaps that were never looked into or clarified by police investigation; and *second*, it qualified a simple missing person report into an enforced disappearance case by injecting the element of participation by agents of the State and thus brought into question how the State reacted to the disappearance.

Based on these considerations, we held that the government in general, through the PNP and the PNP-CIDG, and in particular, the Chiefs of these organizations, together with Col. Kasim, were **fully accountable**[6] for the enforced disappearance of Tagitis. Specifically, we held Col. Kasim accountable for his failure to disclose under oath information relating to the enforced disappearance; for the purpose of this accountability, we ordered that Col. Kasim be impleaded as a party to this case. Similarly, we also held the PNP accountable for the suppression of vital information that Col. Kasim could, but did not, provide with the same obligation of disclosure that Col. Kasim carries.

The Motion for Reconsideration

The petitioners cited two grounds in support of their Motion for Reconsideration.

First, the petitioners argue that there was no sufficient evidence to conclude that Col. Kasim's disclosure unequivocally points to some government complicity in the disappearance of Tagitis. Specifically, the petitioners contend that this Court erred in unduly relying on the raw information given to Col. Kasim by a personal intelligence "*asset*" without any other evidence to support it. The petitioners also point out that the Court misapplied its cited cases (*Secretary of Defense v. Manalo*,[7] *Velasquez Rodriguez v. Honduras*,[8] and *Timurtas v. Turkey*[9]) to support its December 3, 2009 decision; in those cases, more than one circumstance pointed to the complicity of the government and its agents. The petitioners emphasize that in the present case, the respondent only presented a "*token piece of evidence*" that points to Col. Kasim as the source of information that Tagitis was under custodial investigation for having been suspected as a "*terrorist supporter*." This, according to the petitioners, cannot be equated to the substantial evidence required by the Rule on the Writ of

Amparo.[10]

Second, the petitioners contend that Col. Kasim's death renders impossible compliance with the Court's directive in its December 3, 2009 decision that Col. Kasim be impleaded in the present case and held accountable with the obligation to disclose information known to him and to his "*assets*" on the enforced disappearance of Tagitis. The petitioners alleged that Col. Kasim was killed in an encounter with the Abu Sayaff Group on May 7, 2009. To prove Col. Kasim's death, the petitioners attached to their motion a copy of an article entitled "*Abus kill Sulu police director*" published by the Philippine Daily Inquirer on May 8, 2009.[11] This article alleged that "*Senior Supt. Julasirim Kasim, his brother Rosalin, a police trainee, and two other police officers were killed in a fire fight with Abu Sayyaf bandits that started at about 1 p.m. on Thursday, May 7, 2009 at the boundaries of Barangays Kulasi and Bulabog in Maimbung town, Sulu*." The petitioners also attached an official copy of General Order No. 1089 dated May 15, 2009 issued by the PNP National Headquarters, indicating that "PS SUPT [Police Senior Superintendent] Julasirim Ahadin Kasim 0-05530, PRO ARMM, is posthumously retired from PNP service effective May 8, 2009."[12] Additionally, the petitioners point out that the intelligence "*assets*" who supplied the information that Tagitis was under custodial investigation were personal to Col. Kasim; hence, the movants can no longer comply with this Court's order to disclose any information known to Col. Kasim and his "*assets.*"

The Court's Ruling

We hold that our directive to implead Col. Kasim as a party to the present case has been rendered moot and academic by his death. Nevertheless, we resolve to deny the petitioners' motion for reconsideration for lack of merit.

Paragraph (e) of the dispositive portion of our December 3, 2009 decision directs:

> e. Ordering Colonel Julasirim Ahadin Kasim impleaded in this case and holding him accountable with the obligation to disclose information known to him and to his "*assets*" in relation with the enforced disappearance of Engineer Morced N. Tagitis;

Undisputably, this directive can no longer be enforced, and has been rendered moot and academic, given Col. Kasim's demise. His intervening death, however, does not necessarily signify the loss of the information Col. Kasim may have left behind, particularly the network of "*assets*" he utilized while he was in the service. Intelligence gathering is not an activity conducted in isolation, and involves an interwoven network of informants existing on the basis of symbiotic relationships with the police and the military. It is not farfetched that a resourceful investigator, utilizing the extraordinary diligence that the Rule on the Writ of *Amparo* requires,[13] can still access or reconstruct the information Col. Kasim received from his "*asset*" or network of assets during his lifetime.

The extinction of Col. Kasim's personal accountability and obligation to disclose material information, known to him and his assets, does not also erase the burden of disclosure and investigation that rests with the PNP and the CIDG. Lest this Court

be misunderstood, we reiterate that our holding in our December 3, 2009 Decision that the PNP -- through the incumbent PNP Chief; and the PNP-CIDG, through its incumbent Chief -- are **directly responsible**[14] for the disclosure of material facts known to the government and to their offices regarding the disappearance of Tagitis; and that the conduct of proper investigation using extraordinary diligence still subsists. These are continuing obligations that will not truly be terminated until the enforced disappearance of the victim, Engr. Morced N. Tagitis, is fully addressed by the *responsible* or *accountable* parties, as we directed in our Decision.

We now turn to the petitioners' substantial challenge to the merits of our December 3, 2009 decision.

We see no merit in the petitioners' submitted position that no sufficient evidence exists to support the conclusion that the Kasim evidence unequivocally points to some government complicity in the disappearance. Contrary to the petitioners' claim that our conclusions only relied on Col. Kasim's report, our Decision plainly and pointedly considered other evidence supporting our conclusion, particularly the consistent denials by government authorities of any complicity in the disappearance of Tagitis; the dismissive approach of the police authorities to the report of the disappearance; and the conduct of haphazard investigations that did not translate into any meaningful results. We painstakingly ruled:

> To give full meaning to our Constitution and the rights it protects, we hold that, as in *Velasquez*, we should at least take a close look at the available evidence to determine the correct import of every piece of evidence - even of those usually considered inadmissible under the general rules of evidence - taking into account the surrounding circumstances and the test of reason that we can use as basic minimum admissibility requirement. In the present case, we should at least determine whether the Kasim evidence before us is relevant and meaningful to the disappearance of Tagistis and reasonably consistent with other evidence in the case.
>
> x x x
>
> The Kasim evidence assumes critical materiality given the dearth of direct evidence on the above aspects of the case, as it supplies the gaps *that were never looked into and clarified* by police investigation. It is the evidence, too, that colors a simple missing person report into an enforced disappearance case, as it injects the element of participation by agents of the State and thus brings into question how the State reacted to the disappearance.
>
> x x x
>
> **We glean from all these pieces of evidence and developments a consistency in the government's denial of any complicity in the disappearance of Tagitis, disrupted only by the report made by Col. Kasim to the respondent at Camp Katitipan.** Even Col. Kasim, however, eventually denied that he ever made the disclosure that Tagitis was under custodial investigation for complicity in terrorism. **Another**

> **distinctive trait that runs through these developments is the government's dismissive approach to the disappearance,** starting from the initial response by the Jolo police to Kunnong's initial reports of the disappearance, to the responses made to the respondent when she herself reported and inquired about her husband's disappearance, and even at Task Force Tagitis itself.
>
> As the CA found through Task Force Tagitis, the investigation was at best haphazard since the authorities were looking for a man whose picture they initially did not even secure. The returns and reports made to the CA fared no better, as the CIDG efforts themselves were confined to searching for custodial records of Tagitis *in their various departments and divisions*. To point out the obvious, if the abduction of Tagitis was a "*black*" operation because it was unrecorded or officially unauthorized, no record of custody would ever appear in the CIDG records; Tagitis, too, would not be detained in the usual police or CIDG detention places**. In sum, none of the reports on record contains any meaningful results or details on the depth and extent of the investigation made.** To be sure, reports of top police officials indicating the personnel and units they directed to investigate can never constitute exhaustive and meaningful investigation, or equal detailed investigative reports of the activities undertaken to search for Tagitis. Indisputably, the police authorities from the very beginning failed to come up to the extraordinary diligence that the *Amparo* Rule requires. [Emphasis in the original]

Likewise, we see no merit in the petitioners' claim that the Kasim evidence does not amount to substantial evidence required by the Rule on the Writ of *Amparo*. This is not a new issue; we extensively and thoroughly considered and resolved it in our December 3, 2009 Decision. At this point, we need not go into another full discussion of the justifications supporting an evidentiary standard specific to the Writ of *Amparo.* Suffice it to say that we continue to adhere to the substantial evidence rule that the Rule on the Writ of *Amparo* requires, with some adjustments for flexibility in considering the evidence presented. When we ruled that hearsay evidence (usually considered inadmissible under the general rules of evidence) may be admitted as the circumstances of the case may require, we did not thereby dispense with the substantial evidence rule; we merely relaxed the evidentiary rule on the *admissibility of evidence*, maintaining all the time the standards of reason and relevance that underlie every evidentiary situation. This, we did, by considering the totality of the obtaining situation and the consistency of the hearsay evidence with the other available evidence in the case.

We also cannot agree with the petitioners' contention that we misapplied *Secretary of Defense v. Manalo*,[15] *Velasquez Rodriguez v. Honduras*,[16] and *Timurtas v. Turkey*[17] to support our December 3, 2009 decision. The petitioners make this claim with the view that in these cases, more than one circumstance pointed to the government or its agents as the parties responsible for the disappearance, while we can only point to the Kasim evidence. A close reading of our December 3, 2009 Decision shows that it rests on more than one basis.

At the risk of repetition, we stress that other pieces of evidence point the way