

## EN BANC

[ G.R. No. 182498, December 03, 2009 ]

**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.**

### D E C I S I O N

**BRION, J.:**

We review in this petition for review on *certiorari*<sup>[1]</sup> the decision dated March 7, 2008 of the Court of Appeals (CA) in C.A-G.R. *AMPARO* No. 00009.<sup>[2]</sup> This CA decision confirmed the enforced disappearance of Engineer Morced N. Tagitis (*Tagitis*) and granted the Writ of *Amparo* at the petition of his wife, Mary Jean B. Tagitis (*respondent*). The dispositive portion of the CA decision reads:

**WHEREFORE**, premises considered, petition is hereby **GRANTED**. The Court hereby **FINDS** that this is an "**enforced disappearance**" within the meaning of the United Nations instruments, as used in the Amparo Rules. The **privileges** of the writ of *amparo* are hereby extended to Engr. Morced Tagitis.

Consequently: (1) respondent **GEN. EDGARDO M. DOROMAL**, Chief, Criminal Investigation and Detention Group (CIDG) who should order **COL. JOSE VOLPANE PANTE**, CIDG-9 Chief, Zamboanga City, to aid him; (2) respondent **GEN. AVELINO I. RAZON**, Chief, PNP, who should order his men, namely: (a) respondent **GEN. JOEL GOLTIAO**, Regional Director of ARMM PNP, (b) **COL. AHIRON AJIRIM**, both head of TASK FORCE TAGITIS, and (c) respondent **SR. SUPERINTENDENT LEONARDO A. ESPINA**, Chief, Police Anti-Crime and Emergency Response, to aid him as their superior- are hereby **DIRECTED** to exert **extraordinary diligence and efforts**, not only to protect the life, liberty and security of Engr. Morced Tagitis, but also to extend the **privileges** of the writ of *amparo* to Engr. Morced Tagitis and his family, and to submit a monthly report of their actions to this Court, as a way of **PERIODIC REVIEW** to enable this Court to monitor the action of respondents.

This *amparo* case is hereby **DISMISSED** as to respondent **LT. GEN. ALEXANDER YANO**, Commanding General, Philippine Army, and as to respondent **GEN. RUBEN RAFAEL**, Chief Anti-Terror Task Force Comet, Zamboanga City, both being with the military, which is a separate and

distinct organization from the police and the CIDG, in terms of operations, chain of command and budget.

This Decision reflects the nature of the Writ of *Amparo* - a protective remedy against violations or threats of violation against the rights to life, liberty and security.<sup>[3]</sup> *It embodies, as a remedy, the court's directive to police agencies to undertake specified courses of action to address the disappearance of an individual, in this case, Engr. Morced N. Tagitis.* It does not determine guilt nor pinpoint criminal culpability for the disappearance; rather, it determines **responsibility**, or at least **accountability**, for the enforced disappearance for purposes of imposing the appropriate remedies to address the disappearance. **Responsibility** refers to the extent the actors have been established by substantial evidence to have participated in whatever way, by action or omission, in an enforced disappearance, as a measure of the remedies this Court shall craft, among them, the directive to file the appropriate criminal and civil cases against the responsible parties in the proper courts. **Accountability**, on the other hand, refers to the measure of remedies that should be addressed to those who exhibited involvement in the enforced disappearance without bringing the level of their complicity to the level of responsibility defined above; or who are imputed with knowledge relating to the enforced disappearance and who carry the burden of disclosure; or those who carry, but have failed to discharge, the burden of extraordinary diligence in the investigation of the enforced disappearance. In all these cases, the issuance of the Writ of *Amparo* is justified by our primary goal of addressing the disappearance, so that the life of the victim is preserved and his liberty and security are restored.

We highlight this nature of a Writ of *Amparo* case at the outset to stress that the unique situations that call for the issuance of the writ, as well as the considerations and measures necessary to address these situations, may not at all be the same as the standard measures and procedures in ordinary court actions and proceedings. In this sense, the Rule on the Writ of *Amparo*<sup>[4]</sup> (*Amparo Rule*) issued by this Court is unique. The *Amparo* Rule should be read, too, as a work in progress, as its directions and finer points remain to evolve through time and jurisprudence and through the substantive laws that Congress may promulgate.

### **THE FACTUAL ANTECEDENTS**

The background facts, based on the petition and the records of the case, are summarized below.

The established facts show that Tagitis, a consultant for the World Bank and the Senior Honorary Counselor for the Islamic Development Bank (*IDB*) Scholarship Programme, was last seen in Jolo, Sulu. Together with Arsimin Kunnong (*Kunnong*), an IDB scholar, Tagitis arrived in Jolo by boat in the early morning of October 31, 2007 from a seminar in Zamboanga City. They immediately checked-in at ASY Pension House. Tagitis asked Kunnong to buy him a boat ticket for his return trip the following day to Zamboanga. When Kunnong returned from this errand, Tagitis was no longer around.<sup>[5]</sup> The receptionist related that Tagitis went out to buy food at around 12:30 in the afternoon and even left his room key with the desk.<sup>[6]</sup> Kunnong looked for Tagitis and even sent a text message to the latter's Manila-based secretary who did not know of Tagitis' whereabouts and activities either; she advised Kunnong to simply wait.<sup>[7]</sup>

On November 4, 2007, Kunnong and Muhammad Abdulnazeir N. Matli, a UP professor

of Muslim studies and Tagitis' fellow student counselor at the IDB, reported Tagitis' disappearance to the Jolo Police Station.<sup>[8]</sup> On November 7, 2007, Kunnong executed a sworn affidavit attesting to what he knew of the circumstances surrounding Tagitis' disappearance.<sup>[9]</sup>

More than a month later (on December 28, 2007), the respondent filed a Petition for the Writ of *Amparo* (*petition*) with the CA through her Attorney-in-Fact, Atty. Felipe P. Arcilla.<sup>[10]</sup> The petition was directed against Lt. Gen. Alexander Yano, Commanding General, Philippine Army; Gen. Avelino I. Razon, Chief, Philippine National Police (*PNP*); Gen. Edgardo M. Doromal, Chief, Criminal Investigation and Detention Group (*CIDG*); Sr. Supt. Leonardo A. Espina, Chief, Police Anti-Crime and Emergency Response; Gen. Joel Goltiao, Regional Director, ARMM-PNP; and Gen. Ruben Rafael, Chief, Anti-Terror Task Force Comet [collectively referred to as *petitioners*]. After reciting Tagitis' personal circumstances and the facts outlined above, the petition went on to state:

x x x x

7. Soon after the student left the room, Engr. Tagitis went out of the pension house to take his early lunch but while out on the street, **a couple of burly men believed to be police intelligence operatives, forcibly took him and boarded the latter on a motor vehicle then sped away** without the knowledge of his student, Arsimin Kunnong;

8. As instructed, in the late afternoon of the same day, Kunnong returned to the pension house, and was surprised to find out that subject Engr. Tagitis cannot [*sic*] be contacted by phone and was not also around and his room was closed and locked;

9. Kunnong requested for the key from the desk of the pension house who [*sic*] assisted him to open the room of Engr. Tagitis, where they discovered that the personal belongings of Engr. Tagitis, including cell phones, documents and other personal belongings were all intact inside the room;

10. When Kunnong could not locate Engr. Tagitis, the former sought the help of another IDB scholar and reported the matter to the local police agency;

11. Arsimin Kunnong including his friends and companions in Jolo, exerted efforts in trying to locate the whereabouts of Engr. Tagitis and when he reported the matter to the police authorities in Jolo, he was immediately given a ready answer that Engr. Tagitis could have been abducted by the Abu Sayyaf group and other groups known to be fighting against the government;

12. Being scared with [*sic*] these suggestions and insinuations of the police officers, Kunnong reported the matter to the [respondent, wife of Engr. Tagitis] by phone and other responsible officers and coordinators of the IDB Scholarship Programme in the Philippines, who alerted the office of the Governor of ARMM who was then preparing to attend the OIC meeting in Jeddah, Saudi Arabia;

13. [Respondent], on the other hand, approached some of her co-employees with the Land Bank in Digos branch, Digos City, Davao del Sur

who likewise sought help from some of their friends in the military who could help them find/locate the whereabouts of her husband;

14. All of these efforts of the [respondent] did not produce any positive results except the information from persons in the military who do not want to be identified that Engr. Tagitis is in the hands of the uniformed men;

15. According to reliable information received by the [respondent], **subject Engr. Tagitis is in the custody of police intelligence operatives, specifically with the CIDG, PNP Zamboanga City, being held against his will in an earnest attempt of the police to involve and connect Engr. Tagitis with the different terrorist groups;**

X X X X

17. [Respondent] filed her complaint with the PNP Police Station in the ARMM in Cotabato and in Jolo, as suggested by her friends, seeking their help to find her husband, but [respondent's] request and pleadings failed to produce any positive results;

18. Instead of helping the [respondent], she [sic] was told of an intriguing tale by the police that her husband, subject of the petition, was not missing but was with another woman having good time somewhere, which is a clear indication of the [petitioners'] refusal to help and provide police assistance in locating her missing husband;

19. The continued failure and refusal of the [petitioners] to release and/or turn-over subject Engr. Tagitis to his family or even to provide truthful information to [the respondent] of the subject's whereabouts, and/or allow [the respondent] to visit her husband Engr. Morced Tagitis, caused so much sleepless nights and serious anxieties;

20. Lately, [the respondent] was again advised by one of the [petitioners] to go to the ARMM Police Headquarters again in Cotabato City and also to the different Police Headquarters including [those] in Davao City, in Zamboanga City, in Jolo, and in Camp Crame, Quezon City, and all these places have been visited by the [respondent] in search for her husband, which entailed expenses for her trips to these places thereby resorting her to borrowings and beggings [sic] for financial help from friends and relatives only to try complying [sic] to the different suggestions of these police officers, despite of which, her efforts produced no positive results up to the present time;

21. In fact at times, some police officers, who [sympathized with] the sufferings undergone by the [respondent], informed her that they are not the proper persons that she should approach, but assured her not to worry because her husband is [sic] in good hands;

22. The unexplained uncooperative behavior of the [petitioners] to the [respondent's] request for help and failure and refusal of the [petitioners] to extend the needed help, support and assistance in locating the whereabouts of Engr. Tagitis who had been declared missing since October 30, 2007 which is almost two (2) months now, clearly indicates that the [petitioners]

are actually in physical possession and custody of [respondent's] husband, Engr. Tagitis;

x x x x

25. [The respondent] has exhausted all administrative avenues and remedies but to no avail, and under the circumstances, [the respondent] has no other plain, speedy and adequate remedy to protect and get the release of subject Engr. Morced Tagitis from the illegal clutches of the [petitioners], their intelligence operatives and the like which are in total violation of the subject's human and constitutional rights, except the issuance of a WRIT OF AMPARO. [Emphasis supplied]

On the same day the petition was filed, the CA immediately issued the Writ of *Amparo*, set the case for hearing on January 7, 2008, and directed the petitioners to file their verified return within seventy-two (72) hours from service of the writ.<sup>[11]</sup>

In their verified Return filed during the hearing of January 27, 2008, the petitioners denied any involvement in or knowledge of Tagitis' alleged abduction. They argued that the allegations of the petition were incomplete and did not constitute a cause of action against them; were baseless, or at best speculative; and were merely based on hearsay evidence.<sup>[12]</sup>

The affidavit of PNP Chief Gen. Avelino I. Razon, attached to the Return, stated that: he did not have any personal knowledge of, or any participation in, the alleged disappearance; that he had been designated by President Gloria Macapagal Arroyo as the head of a special body called TASK FORCE USIG, to address concerns about extralegal killings and enforced disappearances; the Task Force, *inter alia*, coordinated with the investigators and local police, held case conferences, rendered legal advice in connection to these cases; and gave the following summary:<sup>[13]</sup>

x x x x

4. a) On November 5, 2007, the Regional Director, Police Regional Office ARMM submitted a report on the alleged disappearance of one Engr. Morced Tagitis. According to the said report, the victim checked-in at ASY Pension House on October 30, 2007 at about 6:00 in the morning and then roamed around Jolo, Sulu with an unidentified companion. It was only after a few days when the said victim did not return that the matter was reported to Jolo MPS. Afterwards, elements of Sulu PPO conducted a thorough investigation to trace and locate the whereabouts of the said missing person, but to no avail. The said PPO is still conducting investigation that will lead to the immediate findings of the whereabouts of the person.

b) Likewise, the Regional Chief, 9RCIDU submitted a Progress Report to the Director, CIDG. The said report stated among others that: subject person attended an Education Development Seminar set on October 28, 2007 conducted at Ateneo de Zamboanga, Zamboanga City together with a Prof. Matli. On October 30, 2007, at around 5:00 o'clock in the morning, Engr. Tagitis reportedly arrived at Jolo Sulu wharf aboard M/V *Bounty Cruise*, he was then billeted at ASY Pension House. At about 6:15 o'clock in the morning of the same date, he instructed his student to purchase a fast craft