

## EN BANC

[ G.R. No. 188163, October 03, 2017 ]

**LT. SG. MARY NANCY P. GADIAN, PETITIONER, VS. ARMED FORCES OF THE PHILIPPINES CHIEF OF STAFF LT. GEN. VICTOR IBRADO; PHILIPPINE NAVY FLAG OFFICER IN COMMAND VICE-ADMIRAL FERDINAND GOLEZ; COL. JOEL IBAÑEZ-CHIEF OF STAFF OF THE WESTERN MINDANAO COMMAND; LT. COL. ANTONIO DACANAY, MANAGEMENT AND FINANCIAL OFFICER OF THE WESTERN MINDANAO COMMAND; RETIRED LT. GEN. EUGENIO CEDO, FORMER COMMANDER OF THE WESTERN MINDANAO COMMAND, RESPONDENTS.**

[G.R. No. 188195]

**GEN. VICTORS. IBRADO, AFP; VICE ADMIRAL FERDINAND S. GOLEZ, PN; COL. JOEL IBAÑEZ, PA; AND LTC ANTONIO DACANAY, PA, PETITIONERS, VS. NEDINA GADIAN-DIAMANTE, RESPONDENT.**

### R E S O L U T I O N

**BERSAMIN, J.:**

For consideration are the consolidated petitions for review on *certiorari* separately brought against the decision promulgated on June 15, 2009 by the Court of Appeals (CA) in CA-G.R. SP No. 00034 entitled *Nedina Gadian-Diamante v. Armed Forces of the Philippines Chief of Staff Lt. Gen. Victor Ibrado, Philippine Navy Flag Officer In Command Vice Admiral Ferdinand Golez, Col. Joel Ibañez Chief of Staff of the Western Mindanao Command (WESTMINCOM), Lt. Col. Antonio Dacanay - Management and Financial Officer of the WESTMINCOM, Retired Lt. Gen. Eugenio Cedo Former Commander of the WESTMINCOM,*<sup>[1]</sup> whereby the CA disposed as follows:

WHEREFORE, the Court finds and directs that -

(a) petitioner has established by substantial evidence that there is threat to life, liberty and security to the aggrieved party, Lt. SG Mary Nancy Gadian and thus, she is entitled to the benefits of a protection order under A.M. No. 07-9-12 SC (The Rule on the Writ of *Amparo*).

The Secretary of National Defense is hereby directed to extend the protection to the aggrieved party by adopting necessary measures and employing such personnel to ensure no impairment of the right of the aggrieved party, Lt. SG Mary Nancy P. Gadian to life, liberty and security;

(b) for lack of basis, petitioner's prayer that respondents be directed to

refrain from issuing or carrying out any threat to life, liberty and security of the aggrieved party, Lt. SG Mary Nancy P. Gadian, is denied; and

(c) respondent General Ibrado shall comply strictly with his undertaking to provide material facts of the investigation conducted by the Flag Officer of the Philippine Navy and the Commander of the WESTMINCOM pursuant to his directive issued on May 26, 2009 relative to the circumstances of the threats to the life, liberty and security of the aggrieved party, Lt. SG Mary Nancy P. Gadian, and to bring those responsible, including military personnel, if shown to have participated or had complicity in the commission of the acts complained of, to the courts of justice.

Within five (5) days from receipt of this Decision, a report of the results of the investigation shall be submitted to the Court.

Let a copy of this Decision be served personally on the Secretary of National Defense.

SO ORDERED.

### **Antecedents**

On May 19, 2009, Nedina Gadian-Diamante, the respondent in G.R. No. 188195, alleging herself as the older sister of Lt. SG Mary Nancy P. Gadian (Lt. SG Gadian), brought in this Court a petition for the issuance of a writ of *amparo* in behalf of the latter, impleading as respondents various officers of the Armed Forces of the Philippines (AFP), including then AFP Chief of Staff Lt. Gen. Victor Ibrado (Gen. Ibrado). The petition was docketed as G.R. 187652.<sup>[2]</sup> On May 21, 2009, the Court issued the writ of *amparo*, and directed the CA to hear and decide the petition.<sup>[3]</sup>

On May 22, 2009, the Association of Major Religious Superiors of the Philippines (AMRSP) manifested to the Court their willingness to provide sanctuary to Lt. SG Gadian.<sup>[4]</sup>

The case, meanwhile docketed as CA-G.R. SP No. 00034, was heard in the CA. The initial hearing took place in the CA on May 28, 2009 but Lt. SG Gadian asked for time to submit evidence to support her allegations. The preliminary conference and summary hearing actually proceeded on June 5, 2009. The parties stipulated on the testimonies of psychologist Dr. Lopez, and Roy Lirazan and Armando Matutina, Lt. SG Gadian's companions. After the issues were defined and agreed upon, the evidence of the parties were respectively received.

### **Lt. SG Gadian's Evidence**

Lt. SG Gadian was a commissioned officer of the Philippine Navy. At the time material to this case, she served as the Officer-In-Charge of the Civil Military Operations (CMO) Fusion Cell for the RP-US Balikatan Exercises 2007. As such, she was responsible for the allocation of Balikatan funds and the planning and preparation of the Civil Military Operations component of the RP-US Balikatan Exercises 2007. Balikatan CMO Task Group (BK CMOTG) was formed for this

purpose.<sup>[5]</sup>

For funding, Lt. SG Gadian asked for assistance from her immediate supervisor Lt. Col. Bajunaid Abid who reported to the General Headquarters (GHQ) through Lt. Col. Steve Crespillo (Lt. Col. Crespillo). They learned that the Balikatan Exercises 2007 had an approximate budget of P40 to P46 Million. They requested P4 Million to support the requirements of BK CMOTG.<sup>[6]</sup>

Out of the P4 Million approved budget, Lt. Col. Crespillo secured only P2.7 Million, and delivered P2.3 million thereof to BK CMOTG on two separate occasions, specifically on February 25, 2008 and March 3, 2008. The funds were turned over to Ms. Tessie Beldad, the fund custodian, but Lt. Col. Crespillo retained P400,000.00. Later, Ms. Beldad told Lt. SG Gadian that only P1.3 Million were actually turned over to her, for which she signed an acknowledgment report, pursuant to Lt. Col. Crespillo's instructions, despite the original plan being for him to distribute the funds personally to the participants. Lt. SG Gadian then accompanied Lt. Col. Crespillo to the office of Col. Joel Ibañez (Col. Ibañez) where they started to talk about funding problems, to which Lt. Col. Crespillo replied: *Meron akong dalang konti, sir*. Ms. Tessie Beldad was still required by Col. Buena of the Office of the Deputy Chief of Staff for Operations to submit receipts covering the disbursement of funds.<sup>[7]</sup>

On February 14, 2007, the CMO held the opening ceremony where the funds for food allowance were distributed to the participants.

In May 2007, Lt. SG Gadian was asked about the status of the funds during the staff conference presided by Col. Ibañez. When she reported that the funds had been distributed to the recipients who were grateful for the support, Col. Ibañez shouted: *You are not authorized to distribute the funds! You should tell the people at GHQ that they should follow the proper channel!* She was then required to submit a fund utilization report, but Lt. Col. Crespillo told her not to submit the report to Col. Ibañez because only the Exercise Directorate could require them to submit such report.<sup>[8]</sup>

Thereafter, at the behest of Retired Lt. General Eugenio Cedo (Gen. Cedo) to the Office of the Inspector General, Lt. SG Gadian was investigated for: (a) lavish spending; (b) misuse of funds; and (c) willful disobedience. She was placed on floating status until her transfer to the Philippine Navy in January 2008. The Philippine Navy Efficiency and Separation Board took jurisdiction of her case upon the recommendation of AFP Investigation General Lt. Gen. Bocobo. In January 2009, Gadian was arraigned and pleaded not guilty to the charges. She was absolved from liability by prosecution witnesses. The case was submitted for decision in April 2009.<sup>[9]</sup>

Lt. SG Gadian went on official ordinary leave from April 9 to May 21, 2009. On April 13, 2009, she received a message through text and email requiring her to report to Manila. She flew to Manila on April 14, and attended the hearing on April 15. On April 16, 2009, she filed her resignation from the AFP effective May 1, 2009.<sup>[10]</sup>

Fearing for her life after her resignation, Lt. SG Gadian went into hiding. On May 11, 2009, her sister sought the help of Archbishop Angel Lagdameo of Jaro, Iloilo City by delivering Lt. SG Gadian's letter appealing for help from the church, media, and

all sectors of society. On May 13, 2009, Lt. SG Gadian and her sister were interviewed by different media outlets on the alleged misuse of RP-US Balikatan Exercises 2007 funds.<sup>[11]</sup>

Since then, Lt. SG Gadian received text messages from concerned individuals warning her that people were conducting surveillance at their house. Two attempts were even made to 'snatch' her *en route* to the hearing in Manila. All these were testified to by her family members and people who were with her throughout her struggle.<sup>[12]</sup>

An apprehension order was released for Lt. SG Gadian's arrest, along with a "48 hour ultimatum" for her surrender. Again, concerned individuals told her that there was a verbal shoot to kill order to silence her. She was also not unaware of other unsolved cases similar to the case of Ensign Philip Andrew Pestaño's death after giving information of his superior's engagement in drugs, illegal logging and gun running.<sup>[13]</sup>

### **The AFP's Evidence**

For their part, respondents General Ibrado, Vice Admiral Ferdinand Golez, Col. Ibañez and Lt. Col. Antonio Dacanay admitted that Lt. SG Gadian had been assigned to WESTMINCOM as its Deputy of the CMO. They confirmed that she had taken charge of and supervised the activities of BK CMOTG; that a total of P2.7 Million was turned over to her but she did not inform General Cedo, then the Commander of WESTMINCOM, of the receipt and utilization of the fund. According to them, she acted on her own in disposing the fund.<sup>[14]</sup> Gen. Cedo then constituted a committee to investigate, but she did not appear and instead questioned its jurisdiction because the fund had come from General Headquarters. The committee concluded that she had utilized the fund for its intended purpose, but without the approval of Gen. Cedo, and that she had falsely declared the actual amount of her accommodation based on the receipt (difference of P2,500.00).

The Office of the Inspector General recommended that Lt. SG Gadian return the balance of P2,500.00 for her hotel stay; that she be reprimanded by her Commander according to Article 105 of the Articles of War for violation of Article 97 of the Articles of War, or conduct prejudicial to the good order and military discipline; and that she be reassigned to the Philippine Navy.<sup>[15]</sup>

The AFP Chief of Staff ordered a reinvestigation, however, to look into the matter of technical malversation and insubordination.<sup>[16]</sup> Pending resolution of her case, Lt. SG Gadian filed an application for ordinary leave, and later on tendered her resignation from the service effective May 1, 2009.

Lt. SG Gadian's resignation was not processed due to lack of requisite enclosures and justifications, and because of the pending case. As a consequence, the AFP declared her absent without leave (AWOL), leading to her being dropped from the rolls as a deserter on May 2, 2009. The apprehension order was issued against her pursuant to standard procedures.<sup>[17]</sup>

Aggrieved, Lt. SG Gadian, through her sister, filed the petition for the writ of *amparo*

in this Court, alleging perceived threats to her life, liberty and security from the AFP. As earlier stated, the petition was referred to the CA for further proceedings.

In the CA, the parties stipulated on the following issues:

- (a) whether or not there is [a] threat to aggrieved party's life, liberty and security and sufficiency of proof thereof;
- (b) in the affirmative, whether or not there is [a] link between the threat to the life, liberty and security of the aggrieved party and, any or all, of the respondents; and
- (c) whether or not the aggrieved party is entitled to the reliefs prayed [for] in the Petition.<sup>[18]</sup>

Lt. SG Gadian then made public appearances with media coverage giving statements about the conduct of RP-US Balikatan Exercises 2007. She explained that she had resorted to the writ of *amparo* because of perceived threats to her life, liberty and security. She incorporated her claims of the threats in her affidavit, wherein she detailed the text messages she had received about "people who were tracking, conducting casing and surveillance" of her place, and the presence of plain-clothes men at their house looking for her and her children. Her statements were corroborated by witnesses, including members of her family and friends who had accompanied her.<sup>[19]</sup>

The respondents denied knowledge of any existing threats against Lt. SG Gadian's life, but did not present controverting evidence. On his part, respondent Gen. Cedo averred that he had had no participation in the issuance of the apprehension order and the shoot-to-kill order against her; and that he had retired from the service in September 2007 and had not been interested in her whereabouts.<sup>[20]</sup>

### **Decision of the CA**

The CA promulgated its assailed decision on June 15, 2009.<sup>[21]</sup>

In its decision, the CA observed that receiving messages through SMS warning of a shoot-to-kill order against a person was not alarming; that, however, the situation became different when the person threatened was a junior officer of the AFP who had exposed anomalies regarding the conduct of military exercises involving the country and the United States of America, and the expose could involve senior officers of the AFP; that the situation was complicated when unidentified persons had knocked at the door of the house where Lt. SG Gadian lived without expressing the purpose of their visit, and, in addition, when there was an attempt to abduct; that such circumstances only proved that there had really been an actual threat to her life, liberty and security.<sup>[22]</sup>

Yet, the CA noted that Lt. SG Gadian had not established the authorship of the threats against her; that her affidavit did not implicate any of the respondents in the making of the threats; that although her father and sister had testified about men who had been making inquiries of her whereabouts, they had not attributed any overt act to the men that would suffice to deduce the clear intent to harm her; and that her two companions at the time the attempts to snatch her occurred did not