

## EN BANC

[ G.R. No. 183711, February 04, 2014 ]

**EDITA T. BURGOS, PETITIONER, VS. GEN. HERMOGENES ESPERON, JR., LT. GEN. ROMEO P. TOLENTINO, MAJ. GEN. JUANITO GOMEZ, MAJ. GEN. DELFIN BANGIT, LT. COL. NOEL CLEMENT, LT. COL. MELQUIADES FELICIANO, AND DIRECTOR GENERAL OSCAR CALDERON, RESPONDENTS.**

[G.R. No. 183712]

**EDITA T. BURGOS, PETITIONER, VS. GEN. HERMOGENES ESPERON, JR., LT. GEN. ROMEO P. TOLENTINO, MAJ. GEN. JUANITO GOMEZ, LT. COL. MELQUIADES FELICIANO, AND LT. COL. NOEL CLEMENT, RESPONDENTS.**

[G.R. No. 183713]

**EDITA T. BURGOS, PETITIONER, VS. CHIEF OF STAFF OF THE ARMED FORCES OF THE PHILIPPINES, GEN. HERMOGENES ESPERON, JR.; COMMANDING GENERAL OF THE PHILIPPINE ARMY, LT. GEN. ALEXANDER YANO; AND CHIEF OF THE PHILIPPINE NATIONAL POLICE, DIRECTOR GENERAL AVELINO RAZON, JR., RESPONDENTS.**

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

**BRION, J.:**

We resolve in this Resolution all the pending incidents in this case, specifically:

- (a) The determination of the relevance and advisability of the public disclosure of the documents submitted by respondents President Gloria Macapagal-Arroyo, Lt. Gen. Romeo P. Tolentino, Maj. Gen. Juanito Gomez, Maj. Gen. Delfin Bangit, Lt. Col. Noel Clement, Lt. Col. Melquiades Feliciano, Director General Oscar Calderon, Chief of Staff of the Armed Forces of the Philippines, Gen. Hermogenes Esperon, Jr.; Commanding General of the Philippine Army, Lt. Gen. Alexander Yano; and Chief of the Philippine National Police, Director General Avelino Razon, Jr. to this Court per paragraph III (i) of the *fallo* of our July 5, 2011 Resolution; and
- (b) The Urgent *Ex Parte Motion Ex Abundanti Cautela*<sup>[1]</sup> (together with sealed attachments) filed by petitioner Edita T. Burgos praying that the Court: (1) order the persons named in the sealed documents impleaded in CA-G.R. SP No. 00008-WA and G.R. No. 183713; (2) issue a writ of *Amparo* on the basis of the newly discovered evidence (the sealed attachments to the motion); and (3) refer the

cases to the Court of Appeals (CA) for further hearings on the newly discovered evidence.

## FACTUAL ANTECEDENTS

### **A. The Court's June 22, 2010 Resolution**

These incidents stemmed from our June 22, 2010 Resolution referring the present case to the Commission on Human Rights (CHR) as the Court's directly commissioned agency, tasked with the continuation of the investigation of Jonas Joseph T. Burgos' abduction with the obligation to report its factual findings and recommendations to this Court. This referral was necessary as the investigation by the Philippine National Police-Criminal Investigation and Detection Group (PNP-CIDG), by the Armed Forces of the Philippines (AFP) Provost Marshal, and even the initial CHR investigation had been less than complete. In all of them, there were significant lapses in the handling of the investigation. In particular, we **highlighted the PNP-CIDG's failure to identify the cartographic sketches of two (one male and one female) of the five abductors of Jonas, based on their interview with the eyewitnesses to the abduction.**

In this same Resolution, we also affirmed the CA's dismissal of the petitions for Contempt and issuance of a Writ of *Amparo* with respect to President Macapagal-Arroyo who was then entitled, as President, to immunity from suit.

### **The March 15, 2011 CHR Report**

On March 15, 2011, the CHR submitted to the Court its *Investigation Report on the Enforced Disappearance of Jonas Burgos (CHR Report)*, in compliance with our June 22, 2010 Resolution. On the basis of the gathered evidence, the CHR submitted the following findings:

Based on the facts developed by evidence obtaining in this case, **the CHR finds that the enforced disappearance of Jonas Joseph T. Burgos had transpired; and that his constitutional rights to life liberty and security were violated by the Government have been fully determined.**

**Jeffrey Cabintoy and Elsa Agasang have witnessed on that fateful day of April 28, 2007 the forcible abduction of Jonas Burgos by a group of about seven (7) men and a woman** from the extension portion of Hapag Kainan Restaurant, located at the ground floor of Ever Gotesco Mall, Commonwealth Avenue, Quezon City.

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The eyewitnesses mentioned above were **Jeffrey Cabintoy (Jeffrey)** and Elsa Agasang (Elsa), who at the time of the abduction were working as **busboy** and Trainee-Supervisor, respectively, at Hapag Kainan Restaurant.

**In his Sinumpaang Salaysay, Jeffrey had a clear recollection of the face of HARRY AGAGEN BALIAGA, JR. as one of the principal**

**abductors**, apart from the faces of the two abductors in the cartographic sketches that he described to the police, after he was shown by the Team the pictures in the PMA Year Book of Batch Sanghaya 2000 and group pictures of men taken some years thereafter.

**The same group of pictures were shown to detained former 56th IB Army trooper Edmond M. Dag-uman (Dag-uman), who also positively identified Lt. Harry Baliaga, Jr. Daguman's *Sinumpaang Salaysay* states that he came to know Lt. Baliaga as a Company Commander in the 56th IB while he was still in the military service (with Serial No. 800693, from 1997 to 2002) also with the 56th IB but under 1Lt. Usmalik Tayaban, the Commander of Bravo Company.** When he was arrested and brought to the 56th IB Camp in April 2005, he did not see Lt. Baliaga anymore at the said camp. The similar reaction that the pictures elicited from both Jeffrey and Daguman did not pass unnoticed by the *Team*. Both men always look pensive, probably because of the pathetic plight they are in right now. It came as a surprise therefore to the *Team* when they could hardly hide their smile upon seeing the face of Baliaga, as if they know the man very well.

Moreover, when the *Team* asked how certain Jeffrey was or [sic] that it was indeed Baliaga that he saw as among those who actually participated in Jonas' abduction. Jeffrey was able to give a graphic description and spontaneously, to boot, the blow by blow account of the incident, including the initial positioning of the actors, specially Baliaga, who even approached, talked to, and prevented him from interfering in their criminal act.

A Rebel-returnee (RR) named Maria Vita Lozada y Villegas @KA MY, has identified the face of the female in the cartographic sketch as a certain Lt. Fernando. While Lozada refuses to include her identification of Lt. Fernando in her *Sinumpaang Salaysay* for fear of a backlash, she told the Team that she was certain it was Lt. Fernando in the cartographic sketch since both of them were involved in counter-insurgency operations at the 56th IB, while she was under the care of the battalion from March 2006 until she left the 56th IB Headquarters in October 2007. Lozada's involvement in counter-insurgency operations together with Lt. Fernando was among the facts gathered by the CHR Regional Office 3 Investigators, whose investigation into the enforced disappearance of Jonas Joseph Burgos was documented by way of an After Mission Report dated August 13, 2008.

**Most if not all the actual abductors would have been identified had it not been for what is otherwise called as *evidentiary difficulties* shamelessly put up by some police and military elites. The deliberate refusal of TJAG Roa to provide the CHR with the requested documents does not only defy the Supreme Court directive to the AFP but *ipso facto* created a disputable presumption that AFP personnel were responsible for the abduction and that their superiors would be found accountable, if not responsible, for the crime committed. This observation finds**

support in the disputable presumption "*That evidence willfully suppressed would be adverse if produced.*" (Paragraph (e), Section 3, Rule 131 on Burden of Proof and Presumptions, Revised Rules on Evidence of the Rules of Court of the Philippines).

**In saying that the requested document is irrelevant, the Team has deemed that the requested documents and profiles would help ascertain the true identities of the cartographic sketches of two abductors because a certain Virgilio Eustaquio has claimed that one of the intelligence operatives involved in the 2007 ERAP 5 case fits the description of his abductor.**

**As regards the PNP CIDG, the positive identification of former 56<sup>th</sup> IB officer Lt. HARRY A. BALIAGA, JR. as one of the principal abductors has effectively crushed the theory of the CIDG witnesses that the NPAs abducted Jonas. Baliaga's true identity and affiliation with the military have been established by overwhelming evidence corroborated by detained former Army trooper Dag-uman**

For lack of material time, the Commission will continue to investigate the enforced disappearance of Jonas Burgos as an independent body and pursuant to its mandate under the 1987 Constitution. Of particular importance are the identities and locations of the persons appearing in the cartographic sketches; the allegations that CIDG Witnesses Emerito G. Lipio and Meliza Concepcion-Reyes are AFP enlisted personnel and the alleged participation of Delfin De Guzman @ Ka Baste in the abduction of Jonas Burgos whose case for Murder and Attempted Murder was dismissed by the court for failure of the lone witness, an army man of the 56<sup>th</sup> IB to testify against him.

Interview with Virgilio Eustaquio, Chairman of the Union Masses for Democracy and Justice (UMDJ), **revealed that the male abductor of Jonas Burgos appearing in the cartographic sketch was among the raiders who abducted him and four others, identified as Jim Cabauatan, Jose Curament, Ruben Dionisio and Dennis Ibona otherwise known as ERAP FIVE.**

Unfortunately, and as already pointed out above, The Judge Advocate General (TJAG) turned down the request of the Team for a profile of the operatives in the so-called "*Erap 5*" abduction on the ground of relevancy and branded the request as a fishing expedition per its Disposition Form dated September 21, 2010.

Efforts to contact Virgilio Eustaquio to secure his affidavit proved futile, as his present whereabouts cannot be determined. And due to lack of material time, the Commission decided to pursue the same and determine the whereabouts of the other members of the "*Erap 5*" on its own time and authority as an independent body.<sup>[2]</sup>

## ***B. The Court's July 5, 2011 Resolution***

On July 5, 2011, in light of the new evidence and leads the CHR uncovered, we issued a Resolution: (1) issuing anew a Writ of *Habeas Corpus* and referring the *habeas corpus* petition to the CA; (2) **holding in abeyance our ruling on the merits of the Amparo aspect of the case; referring back the same to the CA in order to allow Lt. Harry A. Baliaga, Jr. and the present Amparo respondents to file their Comments on the CHR Report; and ordering Lt. Baliaga to be impleaded as a party to the Amparo petition; and** (3) affirming the dismissal of the petitioner's petition for Contempt, without prejudice to the re-filing of the contempt charge as may be warranted by the results of the subsequent CHR investigation. To quote the exact wording of our Resolution:

**WHEREFORE**, in the interest of justice and for the foregoing reasons, we **RESOLVE** to:

### **I. IN G.R. NO. 183711 (HABEAS CORPUS PETITION, CA-G.R. SP No. 99839).**

- a. **ISSUE** a Writ of *Habeas Corpus* anew, returnable to the Presiding Justice of the Court of Appeals who shall immediately refer the writ to the same Division that decided the *habeas corpus* petition;
- b. **ORDER** Lt. Harry A. Baliaga, Jr. impleaded in CA-G.R. SP No. 99839 and G.R. No. 183711, and **REQUIRE** him, together with the incumbent Chief of Staff, Armed Forces of the Philippines; the incumbent Commanding General, Philippine Army; and the Commanding Officer of the 56<sup>th</sup> IB, 7<sup>th</sup> Infantry Division, Philippine Army at the time of the disappearance of Jonas Joseph T. Burgos, Lt. Col. Melquiades Feliciano, to produce the person of Jonas Joseph T. Burgos under the terms the Court of Appeals shall prescribe, and to show cause why Jonas Joseph T. Burgos should not be released from detention;
- c. **REFER** back the petition for *habeas corpus* to the same Division of the Court of Appeals which shall continue to hear this case after the required Returns shall have been filed and render a new decision within thirty (30) days after the case is submitted for decision; and
- d. **ORDER** the Chief of Staff of the Armed Forces of the Philippines and the Commanding General of the Philippine Army to be impleaded as parties, separate from the original respondents impleaded in the petition, and the dropping or deletion of President Gloria Macapagal-Arroyo as party-respondent.

### **II. IN G.R. NO. 183712 (CONTEMPT OF COURT CHARGE, CA-G.R. SP No. 100230).**

- e. **AFFIRM** the dismissal of the petitioner's petition for Contempt in CA-G.R. SP No. 100230, without prejudice to the