

EN BANC

[G.R. No. 183711, July 05, 2011]

EDITA T. BURGOS, PETITIONER, VS. PRESIDENT GLORIA MACAPAGAL-ARROYO, 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, DIRECTOR GENERAL OSCAR CALDERON, RESPONDENTS.

[G.R. No. 183712]

EDITA T. BURGOS, PETITIONER, VS. PRESIDENT GLORIA MACAPAGAL ARROYO, GEN. HERMOGENES ESPERON, JR., LT. GEN. ROMEO P. TOLENTINO, MAJ. GEN. JUANITO GOMEZ, LT. COL. MELQUIADES FELICIANO, 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; 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 review, ^[1] in light of the latest developments in this case, the decision ^[2] dated July 17, 2008 of the Court of Appeals (CA) in the consolidated petitions for *Habeas Corpus*, ^[3] Contempt ^[4] and Writ of *Amparo* ^[5] filed by Edita T. Burgos (*petitioner*). The assailed CA decision dismissed the petition for the issuance of the Writ of *Habeas Corpus*; denied the petitioner's motion to declare the respondents in Contempt; and partially granted the privilege of the Writ of *Amparo*. ^[6]

On June 22, 2010, we issued a Resolution ^[7] 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 and the gathering of evidence, with the obligation to report its factual findings and recommendations to this Court. We found the referral necessary as the investigation by the PNP-CIDG, by the AFP Provost Marshal, and even by the CHR had been less than complete; for one, there were very 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 of eyewitnesses to the abduction. [8] We held:

Considering the findings of the CA and our review of the records of the present case, we conclude that the PNP and the AFP have so far failed to conduct an exhaustive and meaningful investigation into the disappearance of Jonas Burgos, and to exercise the extraordinary diligence (in the performance of their duties) that the Rule on the Writ of *Amparo* requires. Because of these investigative shortcomings, we cannot rule on the case until a more meaningful investigation, using extraordinary diligence, is undertaken.

From the records, we note that there are very significant lapses in the handling of the investigation- among them 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 of eyewitnesses to the abduction. This lapse is based on the information provided to the petitioner by no less than State Prosecutor Emmanuel Velasco of the DOJ who identified the persons who were possibly involved in the abduction, namely: T/Sgt. Jason Roxas (Philippine Army), Cpl. Maria Joana Francisco (Philippine Air Force), M/Sgt. Aron Arroyo (Philippine Air Force), and an alias T.L., all reportedly assigned with Military Intelligence Group 15 of Intelligence Service of the AFP. No search and certification were ever made on whether these persons were AFP personnel or in other branches of the service, such as the Philippine Air Force. As testified to by the petitioner, *no significant follow through was also made by the PNP-CIDG in ascertaining the identities of the cartographic sketches of two of the abductors despite the evidentiary leads provided by State Prosecutor Velasco of the DOJ.* Notably, the PNP-CIDG, as the lead investigating agency in the present case, did not appear to have lifted a finger to pursue these aspects of the case.

We note, too, that no independent investigation appeared to have been made by the PNP-CIDG to inquire into the veracity of Lipio's and Manuel's claims that Jonas was abducted by a certain @KA DANTE and a certain @KA ENSO of the CPP/NPA guerilla unit RYG. The records do not indicate whether the PNP-CIDG conducted a follow-up investigation to determine the identities and whereabouts of @KA Dante and @KA ENSO. These omissions were aggravated by the CA finding that the PNP has yet to refer any case for preliminary investigation to the DOJ despite its representation before the CA that it had forwarded all pertinent and relevant documents to the DOJ for the filing of appropriate charges against @KA DANTE and @KA ENSO.

...While significant leads have been provided to investigators, the investigations by the PNP-CIDG, the AFP Provost Marshal, and even the Commission on Human Rights (*CHR*) have been less than complete. The PNP-CIDG's investigation particularly leaves much to be desired in terms of the extraordinary diligence that the Rule on the Writ of *Amparo* requires.

Following the CHR's legal mandate, we gave the Commission the following specific directives: [9]

(a) ascertaining the identities of the persons appearing in the cartographic sketches of the two alleged abductors as well as their whereabouts;

(b) determining based on records, past and present, the identities and locations of the persons identified by State Prosecutor Velasco alleged to be involved in the abduction of Jonas, namely: T/Sgt. Jason Roxas (Philippine Army); Cpl. Maria Joana Francisco (Philippine Air Force), M/Sgt. Aron Arroyo (Philippine Air Force), and an alias T.L., all reportedly assigned with Military Intelligence Group 15 of Intelligence Service of the AFP; further proceedings and investigations, as may be necessary, should be made to pursue the lead allegedly provided by State Prosecutor Velasco on the identities of the possible abductors;

(c) inquiring into the veracity of Lipio's and Manuel's claims that Jonas was abducted by a certain @KA DANTE and @KA ENSO of the CPP/NPA guerilla unit RYG;

(d) determining based on records, past and present, as well as further investigation, the identities and whereabouts of @KA DANTE and @KA ENSO; and

(e) undertaking all measures, in the investigation of the Burgos abduction, that may be necessary to live up to the extraordinary measures we require in addressing an enforced disappearance under the Rule on the Writ of *Amparo*.

In this same Resolution, we also affirmed the CA's dismissal of the petitions for Contempt and for the issuance of a Writ of *Amparo* with respect to President Macapagal-Arroyo, as she is entitled as President to immunity from suit. [10]

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. [11] In this Report, the CHR recounted the investigations undertaken, whose pertinent details we quote below:

On June 26, 2010, the CHR issued Resolution CHR IV No. A2010-100 to intensify the investigation of the case of the Burgos enforced disappearance; and for this purpose, created a Special Investigation Team...headed by Commissioner Jose Manuel S. Mamauag.

xxx

In compliance with the directive mentioned in the above-quoted *En Banc* Resolution of the Supreme Court, the *Team* conducted field investigations

by: (1) interviewing a) civilian authorities involved in the first investigation of the instant case; b) military men under detention for alleged violations of Articles of War; c) Security Officers of Ever Gotesco Mall, Commonwealth Avenue, Quezon City; d) two (2) of the three (3) CIDG witnesses; e) two (2) eyewitnesses who described to the police sketch artist two (2) faces of a male and female abductors of Jonas Burgos; f) Rebel-Returnees (RRs); g) officers and men in the military and police service; h) local officials and other government functionaries; and i) ordinary citizens; (2) inquiring into the veracity of CIDG witnesses Lipio's and Manuel's claims that Jonas was abducted by a certain @KA DANTE and @KA ENSO of the CPP/NPA guerilla unit RYG; (3) securing case records from the prosecution service and courts of law; (4) visiting military and police units. Offices, camps, detention centers, and jails and requesting copies of documents and records in their possession that are relevant to the instant case; (5) searching for and interviewing witnesses and informants; and (6) pursuing leads provided by them.

S. Email's "Star-Struck"

38. Pursuing the lead mentioned in the anonymous e-mail, which was attached to the Burgos petition as Exhibit "J", *"that the team leader (T.L.) in the Jonas Burgos abduction was a certain Army Captain, (promotable to Major), a good looking guy (tiso), and a potential showbiz personality known otherwise as Captain Star-struck,"* the Team requested the CHR Clearance Section, Legal Division for any information leading to T.L. or to all Philippine Army applicants for CHR clearance whose ranks are Captains or Majors promoted during the years 2007 to 2009.

39. Sometime in November 2010, the Team was able to track down one CHR clearance-applicant who most likely possesses and/or matches the information provided in the said lead. But when his photo/picture was presented to the eyewitnesses, they failed to identify him.

40. Undaunted with the negative identification, the Team suspected that the "team leader" might not have participated in the actual abduction inside *Hapag Kainan Restaurant*, the scene of the crime, but most probably was in one of the "three cars" allegedly used during the operation while giving orders or commanding the actual abductors.

41. In relation to the above suspicion, the Team has theorized that officers below the rank of Captain might have perpetrated the actual abduction.

42. The Team explored this possibility and focused its attention on the officers of the 7th ID, PA, namely: Lt. Vicente O. Dagdag, Jr., the S-4 of 65 IB who executed an affidavit relative to the alleged stolen Plate No. TAB-194; 2Lt. Rey B. Dequito of 56th IB, the witness against Edmond Dag-Uamn for the alleged crime of murder; and 1Lt. Usmalik Tayaban, the Team Leader with the 56th IB who issued a Custody Receipt in connection with the Petition for *Habeas Corpus* filed in Angeles City

relative to the 2006 Emerito Lipio abduction case against the police and military personnel.

T. Face-book account

43. Google search of the names of the above mentioned individuals yielded negative result except for 1Lt. Usmalik Tayaban, whose name was connected to a social networking site, the Face-book account of PMA BATCH SANGHAYA 2000.

44. In the Facebook account Sanghaya, the contents of which is categorized as "PUBLIC" or open to public viewing, it appears that "Malik" Tayaban is a graduate of the Philippine Military Academy (PMA) Batch Sanghaya of 2000. Other leads were also discovered, such as the following: vernacular description of "*tisoy*" which was mentioned by one of the users in the "*comment portion*" of the account which incidentally was also mentioned in the anonymous e-mail as the "*team leader*" (T.L.); the picture of a man sporting a "*back-pack*", which was also mentioned by witness Elsa. Per Elsa's account, the person in the cartographic sketch was wearing a "*back-pack*."

45. Aware of the intricacies of the above-mentioned leads, the *Team* caused the reproduction of all pictures in the Facebook account for future reference; and requested the NBI (Burgos) Team for a copy of the PMA Sanghaya Batch 2000 Year Book, also for future reference.

U. The PMA Year Book

46. Through the efforts of the NBI (Burgos) Team, the *Team* was able to get the PMA Year Book of Sanghaya Batch 2000 and the location of one important eyewitness in the abduction.

V. JEFFREY CABINTOY

47. On December 1, 2010, the *Team* together with the NBI Team were able to locate Jeffrey Cabintoy (Jeffrey), one of the two (2) eyewitnesses who provided the police cartographic artist with the description of two (2) principal abductors of Jonas Burgos. Jeffrey narrated in details (sic) the circumstances that happened before and during the abduction.

48. On December 7, 2010, the *Team* and Jeffrey went to the place of incident at Ever Gotesco Mall, Quezon City to refresh his memory and re-enact what transpired. In the afternoon of the same date, the *Team* invited Jeffrey to the CHR Central Office in Quezon City, where he was shown for identification twenty (20) copies of colored photographs/pictures of men and the almost two hundred forty-four (244) photographs/pictures stored in the computer and lifted from the profiles of the Philippine Military Academy Year Book of Batch Sanghaya 2000.

49. Jeffrey pointed to a man in the two (2) colored group pictures/photographs, that he identified as among the 8-man group who