Republic of the Philippines
Supreme Court
Manila

EN BANC

IN THE MATTER OF THE PETITION FOR THE WRIT OF *AMPARO* AND THE WRIT OF *HABEAS DATA* IN FAVOR OF FRANCIS SAEZ,

FRANCIS SAEZ,
Petitioner,

- versus -

GLORIA MACAPAGAL ARROYO, GEN. HERMOGENES ESPERON, P/DIR. GEN. AVELINO RAZON, 22ND MICO, CAPT. LAWRENCE BANAAG, SGT. CASTILLO, CAPT. ROMMEL GUTIERREZ, CAPT. JAKE OBLIGADO, CPL. ROMANITO QUINTANA, PVT. JERICO DUQUIL, CPL. ARIEL FONTANILLA, A CERTAIN CAPT. ALCAYDO, A CERTAIN FIRST SERGEANT, PVT. ZALDY OSIO, A CERTAIN PFC. SONNY, A CERTAIN CPL. JAMES, A CERTAIN JOEL, RODERICK CLANZA and JEFFREY GOMEZ,
Respondents.

G.R. No. 183533

Present:

SERENO, *C.J.*,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,
PERALTA,
BERSAMIN,
DEL CASTILLO,*
ABAD,**
VILLARAMA, JR.,***
PEREZ,
MENDOZA,
REYES, and
PERLAS-BERNABE, *JJ.*

Promulgated:

SEPTEMBER 25, 2012

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* On Official Business.
** On Leave.
*** On Official Leave.

For action by the Court is the Motion for Reconsideration[1] dated September 26, 2010 filed by petitioner Francis Saez of our Resolution[2] dated August 31, 2010 denying the Petition for Review[3] he filed on July 21, 2008.

The Office of the Solicitor General (OSG) filed its Comment[4] thereon stating that it does not find cogent grounds to warrant setting aside our decision.

Antecedent Facts

On March 6, 2008, the petitioner filed with the Court a petition to be granted the privilege of the writs of *amparo* and *habeas data* with prayers for temporary protection order, inspection of place and production of documents.[5] In the petition, he expressed his fear of being abducted and killed; hence, he sought that he be placed in a sanctuary appointed by the Court. He likewise prayed for the military to cease from further conducting surveillance and monitoring of his activities and for his name to be excluded from the order of battle and other government records connecting him to the Communist Party of the Philippines (CPP).

Without necessarily giving due course to the petition, the Court issued the writ of *amparo* commanding the respondents to make a verified return, and referred the case to the Court of Appeals (CA) for hearing and decision. The case before the CA was docketed as CA-G.R. SP No. 00024 WOA.

In the Return of the Writ,[6] the respondents denied the assignment in the units of Captains Lawrence Banaag and Rommel Gutierrez and Corporal

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1 *Rollo*, pp. 384-399.
2 Id. at 361-365.
3 Id. at 2-15. The petition bears the docket number G.R. No. 183533.
4 Id. at 526-528.
5 Id. at 18-27. The petition was docketed as G.R. No. 181770.
6 Id. at 98-130.

Ariel Fontanilla. The respondents also alleged that the names and descriptions of "Capt. Alcaydo," "a certain First Sergeant," "Cpl. James," "Pfc. Sonny," and "Joel" were insufficient to properly identify some of the persons sought to be included as among the respondents in the petition.

On the other hand, respondents General Hermogenes Esperon, Jr. (Gen. Esperon), Capt. Jacob Thaddeus Obligado, Pvt. Rizaldy A. Osio (Pvt. Osio), Pfc. Romanito C. Quintana, Jr. and Pfc. Jerico Duquil submitted their affidavits.

The CA conducted hearings with an intent to clarify what actually transpired and to determine specific acts which threatened the petitioner's right to life, liberty or security.

During the hearings, the petitioner narrated that starting April 16, 2007, he noticed that he was always being followed by a certain "Joel," a former colleague at *Bayan Muna*. "Joel" pretended peddling *pandesal* in the vicinity of the petitioner's store. Three days before the petitioner was apprehended, "Joel" approached and informed him of his marital status and current job as a baker in Calapan, Mindoro Oriental. "Joel" inquired if the petitioner was still involved with *ANAKPAWIS*. When asked by the CA justices during the hearing if the petitioner had gone home to Calapan after having filed the petition, he answered in the negative explaining that he was afraid of Pvt. Osio who was always at the pier.

CA-G.R. SP No. 00024 WOA

On July 9, 2008, the CA rendered its Decision,[7] denying on formal and substantial grounds the reliefs prayed for in the petition and dropping

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[7] Penned by Associate Justice Arcangelita M. Romilla-Lontok, with Associate Justices Mariano C. Del Castillo (now a Member of this Court) and Romeo F. Barza, concurring; CA *rollo*, pp. 180-201.

former President Gloria Macapagal Arroyo as a respondent. The CA ratiocinated:

> There was no attempt at all to clarify how petitioner came to know about Zaldy Osio's presence at their pier if the former had not gone home since the petition was filed and what Zaldy Osio was doing there to constitute violation or threat to violate petitioner's right to life, liberty or security. This Court cannot just grant the privilege of the writs without substantial evidence to establish petitioner's entitlement thereto. This Court cannot grant the privilege of the writs applied for on mere speculation or conjecture. This Court is convinced that the Supreme Court did not intend it to be so when the rules on the writs of Amparo and Habeas Data were adopted. It is the impression of this Court that the privilege of the writs herein prayed for should be considered as extraordinary remedies available to address the specific situations enumerated in the rules and no other.
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> Not only did the petition and the supporting affidavit x x x fail to allege how the supposed threat or violation of petitioner's [right to] life, liberty and security is committed. Neither is there any narration of any circumstances attendant to said supposed violation or threat to violate petitioner's right to life, liberty or security to warrant entitlement to the privilege of the writs prayed for.
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> A reading of the petition will show that the allegations therein do not comply with the aforestated requirements of Section 6 [Rule on the Writ of *Habeas Data*] of the pertinent rule. The petition is bereft of any allegation stating with specific definiteness as to how petitioner's right to privacy was violated or threatened to be violated. He did not include any allegation as to what recourses he availed of to obtain the alleged documents from respondents. Neither did petitioner allege what specific documents he prays for and from whom or [sic] from what particular office of the government he prays to obtain them. The petition prays "to order respondents to produce any documents submitted to any of them in the matter of any report on the case of FRANCIS SAEZ, including all military intelligence reports."
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> x x x x
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> Both the rules on the writs of Amparo and Habeas Data (Section 17, A.M. No. 07-9-12-SC and Section 16, A.M. No. 08-1-16-SC) provide that the parties shall establish their claims by substantial evidence. Not only was petitioner unable to establish his entitlement to the privilege of the writs applied for, the exigency thereof was negated by his own admission that nothing happened between him and Joel after July 21, 2007. The filing of the petition appears to have been precipitated by his fear that something might happen to him, not because of any apparent violation or visible threat to violate his right to life, liberty or security. Petitioner was, in fact, unable to establish likewise who among the respondents committed specific acts defined under the rules on both writs

to constitute violation or threat to violate petitioner's rights to life, liberty or security or his right to privacy thereof.

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x x x The ruling in *David, et al. vs. Gloria Macapagal Arroyo, et al.* (G.R. No. 171396, May 3, 2006, 489 SCRA 160, 224) is aptly instructive:

> "Settled is the doctrine that the President, during his tenure of office or actual incumbency, may not be sued in any civil or criminal case, and there is no need to provide for it in the Constitution or law. It will degrade the dignity of the high office of the President, the Head of State, if he can be dragged into court litigations while serving as such. Furthermore, it is important that he be freed from any form of harassment, hindrance or distraction to enable him to fully attend to the performance of his official duties and functions. x x x."

x x x x

IV. The petition lacks proper verification in violation of Section 12, 2004 Rules on Notarial Practice.[8]

On July 21, 2008, Petition for Review was filed assailing the foregoing CA decision with the following issues submitted for resolution:

WHETHER OR NOT THE CA COMMITTED REVERSIBLE ERROR IN DISMISSING THE PETITION AND DROPPING GLORIA MACAPAGAL ARROYO AS PARTY RESPONDENT.

WHETHER OR NOT THE NOTARIAL OFFICER'S OMISSION OF REQUIRING FROM THE PETITIONER IDENTIFICATION CARDS RELATIVE TO THE LATTER'S EXECUTION OF THE VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING JUSTIFIES THE DENIAL OF THE PETITION.

WHETHER OR NOT THE CA COMMITTED GROSS ABUSE OF DISCRETION WHEN IT FAILED TO CONCLUDE FROM THE EVIDENCE OFFERED BY THE PETITIONER THE FACT THAT BY BEING PLACED IN THE ORDER OF BATTLE LIST, THREATS AND VIOLATIONS TO THE LATTER'S LIFE, LIBERTY AND

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[8] Id. at 195-199.

SECURITY WERE ACTUALLY COMMITTED BY THE RESPONDENTS.[9]

Court's Resolution dated August 31, 2010

On August 31, 2010, the Court issued the Resolution[10] denying the petition for review for the following reasons, *viz*:

> A careful perusal of the subject petition shows that the CA correctly found that the petition was bereft of any allegation as to what particular acts or omission of respondents violated or threatened petitioner's right to life, liberty and security. His claim that he was incommunicado lacks credibility as he was given a cellular phone and allowed to go back to Oriental Mindoro. The CA also correctly held that petitioner failed to present substantial evidence that his right to life, liberty and security were violated, or how his right to privacy was threatened by respondents. He did not specify the particular documents to be secured, their location or what particular government office had custody thereof, and who has possession or control of the same. He merely prayed that the respondents be ordered "to produce any documents submitted to any of them in the matter of any report on the case of FRANCIS SAEZ, including all military intelligence reports."
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> Petitioner assails the CA in failing to appreciate that in his Affidavit and Fact Sheet, he had specifically detailed the violation of his right to privacy as he was placed in the Order of Battle and promised to have his record cleared if he would cooperate and become a military asset. However, despite questions propounded by the CA Associate Justices during the hearing, he still failed to enlighten the appellate court as to what actually transpired to enable said court to determine whether his right to life, liberty or security had actually been violated or threatened. Records bear out the unsubstantiated claims of petitioner which justified the appellate court's dismissal of the petition.
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> As to petitioner's argument that the CA erred in deleting the President as party-respondent, we find the same also to be without merit. The Court has already made it clear in *David v. Macapagal-Arroyo* that the President, during his or her tenure of office or actual incumbency, may not be sued in any civil or criminal case, and there is no need to provide for it in the Constitution or law. It will degrade the dignity of the high office of the President, the Head of State, if the President can be dragged into court litigations while serving as such. Furthermore, it is important that the President be freed from any form of harassment, hindrance or distraction to enable the President to fully attend to the performance of official duties and functions.[11] (Citation omitted)

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9 *Rollo*, pp. 2-15.
10 Id. at 361-365.
11 Id. at 363-364.

Hence, the petitioner filed the instant motion for reconsideration.[12]

Petitioner's Arguments

Contrary to the CA's findings, it had been shown by substantial evidence and even by the respondents' own admissions that the petitioner's life, liberty and security were threatened. Military personnel, whom the petitioner had named and described, knew where to get him and they can do so with ease. He also became a military asset, but under duress, as the respondents had documents allegedly linking him to the CPP and including him in the order of battle. The petitioner claims that the foregoing circumstances were not denied by the respondents.

The petitioner likewise challenges the CA's finding that he was not rendered *incommunicado* as he was even provided with a cellular phone. The petitioner argues that the phone was only given to him for the purpose of communicating with the respondents matters relative to his infiltration activities of target legal organizations.

The petitioner cites *Secretary of National Defense v. Manalo*,[13] which pronounced that "in the *amparo* context, it is more correct to say that the 'right to security' is actually the 'freedom from threat'".[14] According to the petitioner, his freedom from fear was undoubtedly violated, hence, to him pertains a cause of action. Anent the quantum of proof required in a petition for the issuance of the writ of *amparo*, mere substantial evidence is sufficient. The petition "is not an action to determine criminal guilt requiring proof beyond reasonable doubt, or liability for damages requiring preponderance of evidence, or administrative responsibility requiring

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12 Id. at 384-399.
13 G.R. No. 180906, October 7, 2008, 568 SCRA 1.
14 Id. at 54.

substantial evidence that will require full and exhaustive proceedings".[15] Sadly, in the petitioner's case, the court not only demanded a greater quantum of proof than what the rules require, but it also accorded special preference for the respondents' evidence.

The petitioner also cites a speech delivered in Siliman University by former Chief Justice Reynato Puno who expressed that "the remedy of *habeas data* can be used by any citizen against any governmental agency or register to find out what information is held about his or her person." The person can likewise "request the rectification or even the destruction of erroneous data gathered and kept against him or her." In the petitioner's case, he specifically sought the production of the order of battle, which allegedly included his name, and other records which supposedly contain erroneous data relative to his involvement with the CPP.

OSG's Comment

In the respondents' comment[16] filed by the OSG, it is generally claimed that the petitioner advances no cogent grounds to justify the reversal of the Court's Resolution dated August 31, 2010.

The Court's Disquisition

While the issuance of the writs sought by the petitioner cannot be granted, the Court nevertheless finds ample grounds to modify the Resolution dated August 31, 2010.

The petition conforms to the requirements of the Rules on the Writs of *Amparo* and *Habeas Data*

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15 Id. at 42.

16 *Rollo*, pp. 526-528.

Section 5[17] of A.M. No. 07-9-12-SC (Rule on the Writ of *Amparo*) and Section 6[18] of A.M. 08-1-16-SC (Rule on the Writ of *Habeas Data*) provide for what the said petitions should contain.

In the present case, the Court notes that the petition for the issuance of the privilege of the writs of *amparo* and *habeas data* is sufficient as to its contents. The petitioner made specific allegations relative to his personal circumstances and those of the respondents. The petitioner likewise indicated particular acts, which are allegedly violative of his rights and the participation of some of the respondents in their commission. As to the pre-requisite conduct and result of an investigation prior to the filing of the petition, it was explained that the petitioner expected no relief from the military, which he perceived as his oppressors, hence, his request for assistance from a human rights organization, then a direct resort to the court. Anent the documents sought to be the subject of the writ of *habeas data* prayed for, the Court finds the requirement of specificity to have been satisfied. The documents subject of the petition include the order of battle, those linking the petitioner to the CPP and those he signed involuntarily, and military intelligence reports making references to him. Although the exact locations and the custodians of the documents were not identified, this does not render the petition insufficient. Section 6(d) of the Rule on the Writ of

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[17] Sec. 5. Contents of Petition. – The petition shall be signed and verified and shall allege the following: (a) The personal circumstances of the petitioner; (b) The name and personal circumstances of the respondent responsible for the threat, act or omission, or, if the name is unknown or uncertain, the respondent may be described by an assumed appellation; (c) The right to life, liberty and security of the aggrieved party violated or threatened with violation by an unlawful act or omission of the respondent, and how such threat or violation is committed with the attendant circumstances detailed in supporting affidavits; (d) The investigation conducted, if any, specifying the names, personal circumstances, and addresses of the investigating authority or individuals, as well as the manner and conduct of the investigation, together with any report; (e) The actions and recourses taken by the petitioner to determine the fate or whereabouts of the aggrieved party and the identity of the person responsible for the threat, act or omission; and (f) The relief prayed for the petition may include a general prayer for other just and equitable reliefs.

[18] Sec. 6. Petition. – A verified written petition for a writ of *habeas data* should contain: (a) The personal circumstances of the petitioner and the respondent; (b) The manner the right to privacy is violated or threatened and how it affects the right to life, liberty or security of the aggrieved party; (c) The actions and recourses taken by the petitioner to secure the data or information; (d) The location of the files, registers or databases, the government office, and the person in charge, in possession or in control of the data or information, if known; (e) The reliefs prayed for, which may include the updating, rectification, suppression or destruction of the database or information or files kept by the respondent. In case of threats, the relief may include a prayer for an order enjoining the act complained of; and (f) Such other relevant reliefs as are just and equitable.

Habeas Data is clear that the requirement of specificity arises only when the exact locations and identities of the custodians are known. The *Amparo* Rule was not promulgated with the intent to make it a token gesture of concern for constitutional rights.[19] Thus, despite the lack of certain contents, which the Rules on the Writs of *Amparo* and *Habeas Data* generally require, for as long as their absence under exceptional circumstances can be reasonably justified, a petition should not be susceptible to outright dismissal.

From the foregoing, the Court holds that the allegations stated in the petition for the privilege of the writs of *amparo* and *habeas data* filed conform to the rules. However, they are mere allegations, which the Court cannot accept "hook, line and sinker", so to speak, and whether substantial evidence exist to warrant the granting of the petition is a different matter altogether.

No substantial evidence exists to prove the petitioner's claims

The Court has ruled that in view of the recognition of the evidentiary difficulties attendant to the filing of a petition for the privilege of the writs of *amparo* and *habeas data*, not only direct evidence, but circumstantial evidence, indicia, and presumptions may be considered, so long as they lead to conclusions consistent with the admissible evidence adduced.[20]

With the foregoing in mind, the Court still finds that the CA did not commit a reversible error in declaring that no substantial evidence exist to compel the grant of the reliefs prayed for by the petitioner. **The Court took a second look on the evidence on record and finds no reason to reconsider the denial of the issuance of the writs prayed for**.

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19 *Razon, Jr. v. Tagitis*, G.R. No. 182498, December 3, 2009, 606 SCRA 598, 702.

20 Id. at 690.

In the hearing before the CA, it was claimed that "Joel" once inquired from the petitioner if the latter was still involved with ANAKPAWIS. By itself, such claim cannot establish with certainty that the petitioner was being monitored. The encounter happened once and the petitioner, in his pleadings, nowhere stated that subsequent to the time he was asked about his involvement with *ANAKPAWIS*, he still noticed "Joel" conducting surveillance operations on him. He alleged that he was brought to the camp of the 204th Infantry Brigade in Naujan, Oriental Mindoro but was sent home at 5:00 p.m. The petitioner and the respondents have conflicting claims about what transpired thereafter. The petitioner insisted that he was brought against his will and was asked to stay by the respondents in places under the latter's control. The respondents, on the other hand, averred that it was the petitioner who voluntarily offered his service to be a military asset, but was rejected as the former still doubted his motives and affiliations.

Section 19 of both the Rules on the Writ of *Amparo* and *Habeas Data* is explicit that questions of fact and law can be raised before the Court in a petition for review on *certiorari* under Rule 45. As a rule then, the Court is not bound by the factual findings made by the appellate court which rendered the judgment in a petition for the issuance of the writs of *amparo* and *habeas data*. Be that as it may, in the instant case, the Court agrees with the CA that the petitioner failed to discharge the burden of proof imposed upon him by the rules to establish his claims. It cannot be overemphasized that Section 1 of both the Rules on the Writ of *Amparo* and *Habeas Data* expressly include in their coverage even threatened violations against a person's right to life, liberty or security. Further, threat and intimidation that vitiate the free will – although not involving invasion of bodily integrity – nevertheless constitute a violation of the right to security in the sense of "freedom from threat".[21]

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[21] Supra note 13, at 55.

It must be stressed, however, that such "threat" must find rational basis on the surrounding circumstances of the case. In this case, the petition was mainly anchored on the alleged threats against his life, liberty and security by reason of his inclusion in the military's order of battle, the surveillance and monitoring activities made on him, and the intimidation exerted upon him to compel him to be a military asset. While as stated earlier, mere threats fall within the mantle of protection of the writs of *amparo* and *habeas data*, in the petitioner's case, the restraints and threats allegedly made allegations lack corroborations, are not supported by independent and credible evidence, and thus stand on nebulous grounds.

The Court is cognizant of the evidentiary difficulties attendant to a petition for the issuance of the writs. Unlike, however, the unique nature of cases involving enforced disappearances or extra-judicial killings that calls for flexibility in considering the gamut of evidence presented by the parties, this case sets a different scenario and a significant portion of the petitioner's testimony could have been easily corroborated. In his *Sinumpaang Salaysay*[22] dated March 5, 2008 and the Fact Sheet dated December 9, 2007[23] executed before the Alliance for the Advancement of People's Rights-Southern Tagalog (KARAPATAN-ST), the petitioner stated that when he was invited and interrogated at the military camp in Naujan, Oriental Mindoro, he brought with him his uncle Norberto Roxas, *Barangay* Captain Mario Ilagan and two of his bodyguards, and Edwardo Estabillo – five witnesses who can attest and easily corroborate his statement – but curiously, the petitioner did not present any piece of evidence, whether documentary or testimonial, to buttress such claim nor did he give any reason for their non-presentation. This could have made a difference in light of the denials made by the respondents as regards the petitioner's claims.

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22 CA *rollo*, pp. 12-16.

23 Id. at 17-19.

The existence of an order of battle and inclusion of the petitioner's name in it is another allegation by the petitioner that does not find support on the evidence adduced. The Court notes that such allegation was categorically denied by respondent Gen. Avelino I. Razon, Jr. who, in his Affidavit dated March 31, 2008, stated that he "does not have knowledge about any Armed Forces of the Philippines (AFP) 'order of battle' which allegedly lists the petitioner as a member of the CPP."[24] This was also denied by Pvt. Osio, who the petitioner identified as the one who told him that he was included in the order of battle.[25] The 2nd Infantry (Jungle Fighter) Division of the Philippine Army also conducted an investigation pursuant to the directive of AFP Chief of Staff Gen. Esperon,[26] and it was shown that the persons identified by the petitioners who allegedly committed the acts complained of were not connected or assigned to the 2nd Infantry Division.[27]

Moreover, the evidence showed that the petitioner's mobility was never curtailed. From the time he was allegedly brought to Batangas in August of 2007 until the time he sought the assistance of KARAPATAN-ST, there was no restraint upon the petitioner to go home, as in fact, he went home to Mindoro on several instances. And while he may have been wary of Pvt. Osio's presence at the pier, there was no claim by the petitioner that he was threatened or prevented by Pvt. Osio from boarding any vehicle that may transport him back home. The petitioner also admitted that he had a mobile phone; hence, he had unhampered access to communication and can readily seek assistance from non-governmental organizations and even government agencies.

The respondents also belied the petitioner's claim that they forced him to become a military informant and instead, alleged that it was the petitioner

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24 Id. at 103.
25 Id. at 98.
26 Id. at 106-107.
27 Id. at 87.

who volunteered to be one. Thus, in his *Sinumpaang Salaysay*[28] executed on March 25, 2008, Pvt. Osio admitted that he actually knew the petitioner way back in 1998 when they were still students. He also stated that when he saw the petitioner again in 2007, the latter manifested his intention to become a military informant in exchange for financial and other forms of assistance.

The petitioner also harps on the alleged "monitoring" activities being conducted by a certain "Joel", *e.g.*, the latter's alleged act of following him, pretending to peddle *pandesal* and asking him about his personal circumstances. Such allegation by the petitioner, however, is, at best, a conclusion on his part, a mere impression that the petitioner had, based on his personal assessment of the circumstances. The petitioner even admitted in his testimony before the CA that when he had a conversation with "Joel" sometime in July 2007, the latter merely asked him whether he was still connected with *ANAKPAWIS*, but he was not threatened "with anything" and no other incident occurred between them since then.[29] There is clearly nothing on record which shows that "Joel" committed overt acts that will unequivocally lead to the conclusion arrived at by the petitioner, especially since the alleged acts committed by "Joel" are susceptible of different interpretations.

Given that the totality of the evidence presented by the petitioner failed to support his claims, the reliefs prayed for, therefore, cannot be granted. The liberality accorded to *amparo* and *habeas data* cases does not mean that a claimant is dispensed with the *onus* of proving his case. "Indeed, even the liberal standard of substantial evidence demands *some* adequate evidence."[30]

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28 Id. at 96-98.
29 TSN, April 2, 2008, pp. 37-39.
30 *Miro v. Dosono*, G.R. No. 170697, April 30, 2010, 619 SCRA 653, 667.

The President cannot be automatically dropped as a respondent pursuant to the doctrine of command responsibility

In *Noriel Rodriguez v. Gloria Macapagal Arroyo, et al.*,[31] the Court stated:

> ***a. Command responsibility of the President***
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> Having established the applicability of the doctrine of command responsibility in *amparo* proceedings, it must now be resolved whether the president, as commander-in-chief of the military, can be held responsible or accountable for extrajudicial killings and enforced disappearances. We rule in the affirmative.
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> To hold someone liable under the doctrine of command responsibility, the following elements must obtain:
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> > a. the existence of a superior-subordinate relationship between the accused as superior and the perpetrator of the crime as his subordinate;
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> > b. the superior knew or had reason to know that the crime was about to be or had been committed; and
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> > c. the superior failed to take the necessary and reasonable measures to prevent the criminal acts or punish the perpetrators thereof.
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> The president, being the commander-in-chief of all armed forces, necessarily possesses control over the military that qualifies him as a superior within the purview of the command responsibility doctrine.
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> On the issue of knowledge, it must be pointed out that although international tribunals apply a strict standard of knowledge, i.e., actual knowledge, such may nonetheless be established through circumstantial evidence. In the Philippines, a more liberal view is adopted and superiors may be charged with constructive knowledge. This view is buttressed by the enactment of Executive Order No. 226, otherwise known as the *Institutionalization of the Doctrine of 'Command Responsibility' in all Government Offices, particularly at all Levels of Command in the Philippine National Police and other Law Enforcement Agencies* (E.O. 226). Under E.O. 226, a government official may be held liable for neglect of duty under the doctrine of command responsibility if he has knowledge that a crime or offense shall be committed, is being committed, or has been committed by his subordinates, or by others within his area of responsibility and, despite such knowledge, he did not take preventive or corrective action either before, during, or immediately after its

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[31] G.R. No. 191805, November 15, 2011.

> commission. Knowledge of the commission of irregularities, crimes or offenses is presumed when (a) the acts are widespread within the government official's area of jurisdiction; (b) the acts have been repeatedly or regularly committed within his area of responsibility; or (c) members of his immediate staff or office personnel are involved.
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> Meanwhile, as to the issue of failure to prevent or punish, it is important to note that as the commander-in-chief of the armed forces, the president has the power to effectively command, control and discipline the military. (Citations omitted)

Pursuant to the doctrine of command responsibility, the President, as the Commander-in-Chief of the AFP, can be held liable for affront against the petitioner's rights to life, liberty and security as long as substantial evidence exist to show that he or she had exhibited involvement in or can be imputed with knowledge of the violations, or had failed to exercise **necessary and reasonable diligence** in conducting the necessary investigations required under the rules.

The Court also stresses that rule that the presidential immunity from suit exists only in concurrence with the president's incumbency.[32] Conversely, this presidential privilege of immunity cannot be invoked by a non-sitting president even for acts committed during his or her tenure.[33] Courts look with disfavor upon the presidential privilege of immunity, especially when it impedes the search for truth or impairs the vindication of a right.[34]

The petitioner, however, is not exempted from the burden of proving by substantial evidence his allegations against the President to make the latter liable for either acts or omissions violative of rights against life, liberty and security. In the instant case, the petitioner merely included the President's name as a party respondent without any attempt at all to show the latter's actual involvement in, or knowledge of the alleged violations. Further, prior to the filing of the petition, there was no request or demand for

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32 Id., citing *Estrada v. Desierto*, G.R. Nos. 146710-15, 146738, March 2, 2001, 353 SCRA 452.
33 *Lozada v. Arroyo*, G.R. Nos. 184379-80, April 24, 2012.
34 Supra note 32.

any investigation that was brought to the President's attention. Thus, while the President cannot be completely dropped as a respondent in a petition for the privilege of the writs of *amparo* and *habeas data* merely on the basis of the presidential immunity from suit, the petitioner in this case failed to establish accountability of the President, as commander-in-chief, under the doctrine of command responsibility.

Compliance with technical rules of procedure is ideal but it cannot be accorded primacy

Among the grounds cited by the CA in denying the petition for the issuance of the writs of *amparo* and *habeas data* was the defective verification which was attached to the petition. In *Tagitis*,[35] supporting affidavits required under Section 5(c) of the Rule on the Writ of *Amparo* were not submitted together with the petition and it was ruled that the defect was fully cured when the petitioner and the witness personally testified to prove the truth of their allegations in the hearings held before the CA. In the instant case, the defective verification was not the sole reason for the CA's denial of the petition for the issuance of the writs of *amparo* and *habeas data*. Nonetheless, it must be stressed that although rules of procedure play an important rule in effectively administering justice, primacy should not be accorded to them especially in the instant case where there was at least substantial compliance with the requirements and where petitioner himself testified in the hearings to attest to the veracity of the claims which he stated in his petition.

To conclude, compliance with technical rules of procedure is ideal but it cannot be accorded primacy. In the proceedings before the CA, the petitioner himself testified to prove the veracity of his allegations which he stated in the petition. Hence, the defect in the verification attached to the

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35 Supra note 19.

petition. Hence, the defect in the verification attached to the petition was deemed cured.

WHEREFORE, premises considered, the petitioner's motion for reconsideration is **DENIED WITH FINALITY**.

SO ORDERED.

BIENVENIDO L. REYES
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

ARTURO D. BRION
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

(On Official Business)
MARIANO C. DEL CASTILLO
Associate Justice

(On Leave)
ROBERTO A. ABAD
Associate Justice

(On Official Leave)
MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

MARIA LOURDES P. A. SERENO
Chief Justice