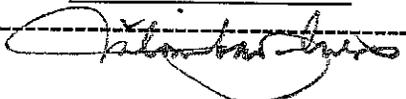


EN BANC

G.R. No. 254753 – SIEGFRED D. DEDURO, Petitioner, v. MAJ. GEN. ERIC C. VINOYA, in his capacity as COMMANDING OFFICER of the 3<sup>rd</sup> INFANTRY DIVISION, PHILIPPINE ARMY, Respondent.

Promulgated:

July 4, 2023

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CONCURRING OPINION

LEONEN, J.:

I concur. The issuance of a writ of *amparo* is justified when red-tagging, vilification, labeling, and guilt by association threaten a person's right to life, liberty, or security.<sup>1</sup>

I had previously outlined the historical antecedents of and the dangers inherent in "red baiting" or "red-tagging" in my separate opinion in *Zarate v. Aquino III*:<sup>2</sup>

This case involves the phenomenon of "red baiting." It is our version of McCarthyism.

To make it easy for military and paramilitary units to silence or cause untold human rights abuses on vocal dissenters, government agents usually resort to stereotyping or caricaturing individuals. This is accomplished by providing witnesses who, under coercive and intimidating conditions, identify the leaders of organizations critical of the administration as masterminds of ordinary criminal acts. Not only does this make these leaders' lives and liberties vulnerable, a chilling effect on dissent is also generated among similar-minded individuals.

Belief in communism has historically been used as a bogey to create non-existent exigencies for purposes of national security. History records the many human rights violations that may have been caused by this unsophisticated view of some in the echelons of military power. History, too, teaches that toleration and the creation of wider deliberative spaces are the more lasting and peaceful ways to debunk worn-out ideologies.

Petitioners in this case allege facts that *threaten* their lives and liberty, and, therefore, their security. The Resolution of the majority

<sup>1</sup> Ponencia, p. 24.

<sup>2</sup> G.R. No. 220028, November 10, 2015 [Notice, *En Banc*].



correctly points out that there is still no tangible offense committed by respondents against petitioners. However, Amparo does not come into existence as a relevant preventive device only when there is certainty of an offense committed. In those cases, preliminary investigation or the judicial determination of probable cause affords a venue for the accused to contest the impending threats [to] his or her liberties.

Rather, Amparo is a remedy designed for events that reside in legal penumbra. Those conditions, which, though ambiguously legal, incrementally create the vulnerabilities that will, with the certainty of experience, lead to the person's harassment, disappearance, or death. Certainly, "red baiting" is quintessentially paradigmatic of these cases.<sup>3</sup> (Citations omitted)

As Justice Sarmiento has pointed out, our own history is an example of when the premise of suppressing the alleged terrors of Communism led to decades of exploiting power for oppression and death:

In registering this dissent I hasten to state furthermore that I am not advocating the cause of Communism, much less am I speaking on behalf of the underground National-Democratic movement. According to Fernando, Communism is an ideology fundamentally at war with our cherished values and traditions. Fernando of course, is entitled to his opinion, but let the matter be, in any event, tested in the democratic marketplace of ideas, and may the better debater win.

The shadow the Anti-Subversion Act has cast upon the so-called "legal Left" is particularly ominous. As it is worded, the Act applies to "similar associations," meaning to say groups akin to the CPP which is supposed to stand for a violent takeover of government power. To be sure, it is a matter of opinion whether the legal Left is a "similar association" since like the CPP, it subscribes to radical change, but as it (the Left) would put it, unlike the clandestine organization, it seeks change by the ways of peace (mainly, protest and related mass actions). But let me reiterate, it is a matter of opinion, and opinions, frequently, differ. What is a legitimate protest movement to one may well be a Communist front to another.

In airing this concern, I do not think I can be accused of raising some imagined fear. Arguably, Leftism (and/or genuine Nationalism) and Communism are half-brothers in the sense that both advocate radical change in society, and advocate it passionately. It is true that what Republic Act No. 1700 punishes is Communism, or in its own language, the Communist conspiracy, and not Leftism or Nationalism, but the question is, where does one draw the line? Apparently, the Act has not drawn one, although one exists somewhere. And there lies the rub, especially with a conservative military establishment alleged to be hostile to the Left.

The reenactment of Republic Act No. 1700 (as Executive Order No. 161) did not, of course, cure its defect but as I put it, "reenacted" it. My personal opinion is that we ought to have known better. The nightmarish years of one-man rule are hopefully behind us, but let not their painful lessons be lost on us.

<sup>3</sup> J. Leonen, Dissenting Opinion in *Zarate v. Aquino III*, G.R. No. 220028, November 10, 2015 [Notice, *En Banc*].

*The dictatorial regime rose to power primarily on a premise of a Communist bloodbath that allegedly awaited the Filipino people, while it unleashed its own brand of terror.*<sup>4</sup> (Emphasis supplied, citations omitted)

As astutely stated in the *ponencia*, a person seeking the protective ambit of a writ of *amparo* need not await the inimical outcomes of being red-tagged to come to pass to be entitled to the writ.<sup>5</sup> The heightened risk of danger or death brought about being labelled as a Communist, a Communist sympathizer, or even merely being adjacent to a Communist cause<sup>6</sup> should be seriously considered by judges in *amparo* proceedings.

**ACCORDINGLY**, I vote to **PARTIALLY GRANT** the Petition for Review on *Certiorari* and **ISSUE** the writ of *amparo* in favor of petitioner Siegfred D. Deduro, returnable to the Regional Trial Court.



**MARVIC M.V.F. LEONEN**  
Senior Associate Justice

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<sup>4</sup> Justice Sarmiento's Dissenting Opinion in *Taruc v. Hon. ERICTA*, 250 Phil. 65, 75–76 (1988) [Per J. Paras, *En Banc*].

<sup>5</sup> *Ponencia*, p. 35.

<sup>6</sup> See, e.g., *In The Matter of Petition for Writ of Amparo of Vivian A. Sanchez*, 865 Phil. 646 (2019) [Per J. Leonen, *En Banc*].