

## **BRIEFER ON THE CASES OF THE ABADILLA MURDER CONVICTS**

(as of 5 June 2001)

prepared by their counsel Atty. Soliman M. Santos, Jr.

### Who are these Abadilla murder case death convicts?

1. LENIDO LUMANOG y LUISTRO – was a businessman (inc. a security guard agency owner) based in Fairview, QC; has BATANGAS roots on his mother's side
2. RAMESES DE JESUS – his sidekick, also staying in Fairview
3. CESAR FORTUNA - was a policeman with the Traffic Management Command, from Cebu, was renting a room at Rameses' place in Fairview
4. AUGUSTO SANTOS - was in odd jobs (e.g. construction work) in Fairview
5. JOEL DE JESUS - was a tricycle driver in Fairview

They are five out of the seven accused (two were acquitted) in the Abadilla murder case when it was **Crim. Case No. Q-96-66684** in the RTC of QC, Branch 103, whose Judge Jaime Salazar, Jr., issued a Joint Decision dated 30 July 1999 and promulgated on 11 August 1999 finding them guilty of the murder and imposing the death penalty. They have been in jail since June 1996 and in Death Row since August 1999. They suffered terrible torture after they were rounded up as suspects in June 1996.

### What was the Abadilla murder?

This was ambush-killing of former PC-Metrocom Col. Rolando Abadilla on 13 June 1996 by several persons using handguns while he was caught in traffic along Katipunan Ave. in QC.

### How did the five convicts get involved in the case?

They and several others were picked up successively from 19 to 26 June 1996 while doing their normal routines in Fairview. The torture of one led to finger-pointing of others. They were rounded up by police operatives of "Task Force Rolly" which was formed by then DILG Sec. Robert Barbers to "solve the crime within ten days." Most of them were presented to the media on 24 June 1996 as the killers of Abadilla, and the prosecution has since stuck to this version. Their being all from Fairview appears related to one theory that the killing was masterminded by a political rival who also resided there (this theory was never established).

### Why were they found guilty?

In the RTC Joint Decision, their guilt was anchored on their alleged positive identification as gunmen and lookouts by one security guard eyewitness near the scene of the shooting. The finding was that there was a conspiracy among them but *no* mastermind, motive, price, reward or promise was established. The murder handguns were never recovered. Ballistics examinations of the recovered slugs and shells did *not* match those from handguns belonging to some of the accused. Fingerprints found on the get-away car were *not* those of the accused.

After the RTC Joint Decision was issued, accused LUMANOG filed a Motion for Reconsideration and then a Supplement which, for the first time in the case, raised strongly as a defense the angle of the Alex Boncayao Brigade's (ABB) true responsibility for the killing. The motion to present additional evidence of this, as well as the motions for reconsideration and new trial, were all denied in one sweep by Judge Salazar in his Order of 25 January 2000. Thus, the Joint Decision stood.

### Were they guilty?

NO, for the simple reason that they did not kill Abadilla and were not there when it happened. These defenses of denial and alibi are reinforced and complemented by the defense of ABB responsibility. Since it was the ABB which was responsible for the Abadilla killing and since they were *not* ABB elements, then it follows that they are innocent.

### What about their positive identification by a security guard (SG Freddie Alejo)?

A number of things can be said about this:

1. It is quite improbable that such positive identification can be made by one who had no previous acquaintance with the killers who suddenly emerged and quickly shot at Abadilla and then, just as suddenly and quickly, commandeered a private car with which they made their get-away, all the while threateningly brandishing their handguns during and after the shooting against possible interference.
2. There are crucial inconsistencies, contradictions and discrepancies in the sworn statements and testimonies of SG Freddie Alejo, including descriptions which do not fit the appearance of the accused, especially LUMANOG. (These inconsistencies are detailed in the RTC case Memorandum for Accused Fortuna dated July 14, 1999, particularly under Point No. 6.)
3. It is easy enough to coach positive identification by a security guard who was at the scene of the crime but could not really/truthfully positively identify the killers.
4. Another security guard eyewitness at the scene of the crime, SG Merlito Herbas, positively testified that the accused were *not* the killers. Others present there, including the occupants of the private car commandeered by the killers for get-away, could not identify them.
5. Both SGs Alejo and Herbas were housed in the Libis bus compound of the Abadilla family after the shooting incident but Herbas got disgruntled about the family's promises. This situation was taken against Herbas but not Alejo in RTC Judge Salazar's evaluation of their respective credibility.
6. Against the lone unreliable positive identification by SG Alejo, there are the contrary eyewitness testimony of SG Herbas, the consistent and supported denials and alibis of all the accused, the very circumstances of the accused and their arrests vis-à-vis the very circumstances of the Abadilla ambush-killing with its military-type precision, the fingerprint and ballistics evidence, with the latter pointing to the ABB angle, for which there is also other evidence – all told, enough for at least reasonable doubt in favor of the accused.
7. The lone unreliable positive identification should never be the “anchor” of so heavy a finding of guilt against five persons for murder and of so heavy a penalty as death.

### What shows ABB responsibility for the Abadilla killing?

So far, there are these:

1. ballistics evidence showing a match between the Abadilla killing and other acknowledged ABB killings (e.g. those of Leonardo Ty and of Suseso de Dios)
2. the ABB's own early media statements and interviews in 1996 claiming responsibility
3. the RPA-ABB's statement of 26 December 1999 reiterating responsibility
4. the courting in January 2000 by an unidentified ABB personality to Fr. Roberto Reyes of the Omega watch taken by the ABB hit squad from their victim Col. Abadilla and reaffirming ABB responsibility
5. the National Amnesty Commission resolution dated 27 May 1999 in favor of former ABB operative Wilfredo Batongbakal indicating the ABB plan or intention to kill Col. Abadilla which partly resulted in the mistaken killing of Suseso de Dios outside the La Vista gate (where Abadilla would pass coming from his Loyola Grand Villas residence)
6. the Sinumpaang Salaysay of Wilfredo Batongbakal dated 25 February 1997 (given to ISAFP shortly after his capture) to the same effect
7. several police investigation reports showing the ABB angle in the Abadilla, Ty and de Dios killings (and possibly in still unavailable police and military intelligence reports)

What are the current cases & their status?

1. In the Supreme Court *En Banc*: the Abadilla murder case with death penalty

a. **GR No. 142065 - Petition for Certiorari** (filed 15 March 2000)

This questions the grave abuse of discretion by RTC Judge Salazar in issuing Orders denying the accused a last chance, during the reconsideration stage, to prove their innocence by presenting additional evidence on the ABB angle. **If granted, it could result in a faster track of acquittal without need for a full review of the judgment of conviction. Thus, this is THE PRIORITY for the death convicts.**

The petitioner death convicts filed a Motion for Early Decision on 30 May 2001, more than a month after they filed their Reply on 19 April 2001 to the prosecution's Comments to their Petition. The Office of the Solicitor General's Comment dated March 5, 2000 merely copied the private prosecutor's Comment dated December 22, 2000. The decision can still take a number of months more, at the rate the case has been going, including suffering two major delays.

b. **GR No. 141660-64 - Automatic Review** (transmitted 11 February 2000)

This is the appeal of the Joint Decision in all its aspects, which usually takes three to four years at the fastest. So far, it has not moved. There is no notice/order yet to file appellant's brief.

2. In the DOJ: the case of torture & other HR violations committed against the Abadilla murder suspects

**I.S. No. 96-663 - Preliminary Investigation** – pending without Resolution since 1996 (!)

This determines whether there is probable cause to file a criminal case for torture and other human rights violations. While of SECONDARY PRIORITY to the main murder/death penalty case, it is also important and can help the latter case where violations of constitutional rights of the accused are raised in issue.

Assigned to State Prosecutor Marilyn Campomanes detailed with the Muntinlupa Prosecutor's Office. She is under the supervision of the Chief State Prosecutor (CSP) Jovencito Zuno and Assistant CSP Nilo Mariano. **They are all under the new Sec. Hernando Perez**. On 30 May 2001, the complainants filed a letter at DOJ requesting the reassignment of the case to another, more diligent state prosecutor of the Office of the CSP, in view of SP Campomanes' alarmingly overly long non-resolution of the case and questionable keeping of its records.

What are the immediate needs in these cases?

1. **In the Supreme Court (G.R. No. 142065), prompt and favorable action on the Motion for Early Decision, leading to allowing the accused to present additional evidence on the ABB angle back in the RTC, if not in the SC itself.**
2. **In the DOJ (I.S. No. 96-663), reassignment of the case to another state prosecutor, followed soon enough by favorable resolution of the preliminary investigation (finding probable cause for torture & other HR violations).**

## REFERENCE LIST OF SOME KEY PAPERS IN THE ABADILLA CASES

When the MURDER CASE was in RTC Branch 103, QC (Crim. Case No. 96-66679 to 84) -

- Formal Offer of Evidence (for Accused Cesar Fortuna) dated April 19, 1999; and Memorandum (for Accused Cesar Fortuna) dated July 14, 1999
- Joint Decision dated July 30, 1999 (gives Judge Salazar's basis for conviction, mainly on the sole "eyewitness" testimony of one security guard near the scene of the ambush-killing - A BASIC STARTING POINT FOR DISCUSSION)
- "Motion for Reconsideration" (of Accused Lenido Lumanog) dated August 25, 1999 (a critique of the Joint Decision on lack of proof beyond reasonable doubt)
- "Supplement to the Motion for Reconsideration" dated 25 November 1999 (a critique of constitutional and other key aspects of the Joint Decision, & raises ABB angle strongly for the first time - VERY IMPT PLEADING)
- Father Roberto Reyes' "Urgent Independent Motion for Leave of Court to Present Vital Evidence" dated January 19, 2000 (again the ABB angle)
- Order dated January 25, 2000 (denying all motions for reconsideration & new trial)
- "Preliminary Statement on the Denial of the Reconsideration of the Death Sentence in the Abadilla Murder Case" dated 26 January 2000 (press release-type statement w/ summary of evidence & arguments on ABB angle)
- Order dated January 26, 2000 (denying Fr. Reyes' motion at the end of its hearing); and Order dated January 28, 2000 (extended explanation of the preceding Order)

After the MURDER CASE was elevated to the SC on Certiorari (G.R. No. 142065) -

- "Petition for Certiorari (Rule 65) and for Extraordinary Legal and Equitable Remedies" dated 9 March 2000 (a critique of the last three orders, esp. on denial of our motion to present additional evidence on the ABB angle, w/ summary of "Relevant Antecedent Proceedings & Facts" esp. after the Joint Decision - VERY IMPT PLEADING)
- **Press Statement/Release "Abadilla Murder Case Death Convicts Petition Supreme Court for Reopening on the ABB Angle" issued on 15 March 2000 (a sort of summary of the Petition for Certiorari)**
- Reply dated 19 April 2001
- **Motion for Early Decision dated 29 May 2001**

In the TORTURE CASE Preliminary Investigation in the DOJ (I.S. No. 96-663) -

- **Amnesty International special report on "The Rolando Abadilla Murder Inquiry - An Urgent Need for Effective Investigation of Torture" released in October 2000 (VERY IMPT REFERENCE - a lot of data here, not only on the torture but also on the suspects and - this is impt - the role of the CHR, DOJ & the Courts)**
- "Additional Submission for Complainants" and "Special Submission for Complainants" both dated 21 September 2000 (these show a strong case for torture & other HR violations)
- **letter to DOJ Sec. Perez and the Office of the Chief State Prosecutor dated 28 May 2001 requesting reassignment of the case to another state prosecutor**